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# Federal Register

Thursday
February 18, 1999

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### WASHINGTON, DC

**WHEN:** February 23, 1999 at 9:00 am.

**WHERE:** Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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**Separate Parts In This Issue**



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**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

# Rules and Regulations

Federal Register
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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 212

**[INS No. 1956–98]**

**RIN 1115–AF28**

## Nonimmigrant Visa Exemption for Certain Nationals of the British Virgin Islands Entering the United States Through St. Thomas, United States Virgin Islands

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule amends the Immigration and Naturalization Service's (Service) regulations to allow nonimmigrant visitors for business or pleasure who are nationals of the British Virgin Islands (BVI) to apply for admission to the United States (U.S.) at the port-of-entry of St. Thomas, U.S. Virgin Islands, without nonimmigrant visas. Since the Department of State closed its post in Antigua in 1994, all BVI residents requiring nonimmigrant visas must either travel to, or mail their applications to, the consular post at Bridgetown, Barbados, the nearest visa-issuing location. The Service's action will facilitate travel to the United States for certain nationals of the BVI while still ensuring the proper application of the provisions of the Immigration and Nationality Act (Act).

**DATES:** *Effective date:* This interim rule is effective February 18, 1999.

*Comment date:* Written comments must be submitted on or before April 19, 1999.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1956–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

William Plunges, Senior Immigration Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW, Room 4064, Washington, DC 20536, telephone (202) 616–7992.

**SUPPLEMENTARY INFORMATION:**

### Why will certain nationals of the British Virgin Islands no longer require nonimmigrant visas to enter the United States?

Due to budgetary constraints, the Department of State has closed several visa-issuing posts worldwide in recent years, including the consulate at St. John's, Antigua, which served residents of the BVI. Consequently, nationals of the BVI who require nonimmigrant visas must either travel to the nearest visa-issuing location, Bridgeton, Barbados, if their need for travel is immediate, or mail their applications for visas to the consular post if time allows. The government of the BVI requested that some accommodation be made to improve this situation, since neither passports nor visas are required of nationals of the United States who enter the BVI. Section 212(d)(4) of the Immigration and Nationality Act authorizes the Attorney General and Secretary of State acting jointly to waive the documentary requirements for certain nonimmigrants on the basis of reciprocity with respect to nationals of foreign contiguous territories or adjacent islands and residents thereof having a common nationality with such nationals. After a joint study, the Department of State and the Service have decided to allow nonimmigrant visitors for business or pleasure who are nationals of the BVI to apply for admission to the United States without nonimmigrant visas and without limitation as to their ultimate destination within the United States, provided that they make such an application for admission at the port-of-entry of St. Thomas, United States Virgin Islands.

### How will the regulations be changed?

Currently, § 212.1(b) allows a national of the BVI to enter into the U.S. Virgin Islands without a nonimmigrant visa, provided the individual does not proceed from the U.S. Virgin Islands to any other part of the United States. If the individual desires to proceed to any other part of the United States, he or she must be in possession of a valid nonimmigrant visa and passport.

This interim rule amends § 212.1(b) by removing the restriction preventing such an individual from entering into any other part of the United States, provided he or she departs from the U.S. Virgin Islands through the port of embarkation at St. Thomas, is proceeding directly by aircraft to another part of the United States, is admissible as a nonimmigrant visitor for business or pleasure, and presents a current Certificate of Good Character issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record. Any other national of the BVI who is applying for admission as a nonimmigrant and plans to proceed beyond the U.S. Virgin Islands must be in possession of a valid unexpired nonimmigrant visa. The Department of State will be issuing simultaneous regulations published elsewhere in this issue of the **Federal Register.**

### Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: this interim rule relieves a restriction, does not impose a new burden, and is beneficial to the traveling public and United States businesses which are patronized by persons benefiting from this rule. This rule also is beneficial to the effective operation of the United States Government, specifically, the Department of State which is relieved from issuing thousands of nonimmigrant visas.

### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service in accordance with the Regulatory

Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects individual visitors to the United States by removing the requirement of securing a nonimmigrant visa prior to entry into the United States beyond the U.S. Virgin Islands.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 12612**

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

**List of Subjects in 8 CFR Part 212**

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. In § 212.1, paragraph (b) is revised to read as follows:

**§ 212.1 Documentary requirements for nonimmigrants.**

* * * * *

*(b) Certain Caribbean residents.* (1) *British, French, and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries.* A visa is not required of a British, French, or Netherlands national, or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his or her residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who:

(i) Is proceeding to the United States as an agricultural worker;

(ii) Is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding to the Virgin Islands of the United States for such purpose, or

(iii) Is the spouse or child of an alien described in paragraph (b)(1)(i) or (b)(1)(ii) of this section, and is accompanying or following to join him or her.

(2) *Nationals of the British Virgin Islands.* A visa is not required of a national of the British Virgin Islands who has his or her residence in the British Virgin Islands, if:

(i) The alien is seeking admission solely to visit the Virgin Islands of the United States; or

(ii) At the time of embarking on an aircraft at St. Thomas, U.S. Virgin Islands, the alien meets each of the following requirements:

(A) The alien is traveling to any other part of the United States by aircraft as a nonimmigrant visitor for business or pleasure (as described in section 101(a)(15)(B) of the Act);

(B) The alien satisfies the examining U.S. Immigration officer at the port-of-entry that he or she is clearly and beyond a doubt entitled to admission in all other respects; and

(C) The alien presents a current *Certificate of Good Conduct* issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

* * * * *

Dated: February 10, 1999.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99–3982 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Parts 312 and 499

**[INS No. 1702–96]**

**RIN 1115–AE02**

## Exceptions to the Educational Requirements for Naturalization for Certain Applicants

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** On March 19, 1997, the Immigration and Naturalization Service (the Service) published a final rule in the **Federal Register** establishing an administrative process to adjudicate requests for exceptions from the English and Civics requirements of section 312 of the Immigration and Nationality Act (the Act), by persons with physical or developmental disabilities, or mental impairments. The Service offered the public the opportunity to comment on the final rule, specifically requesting comments on the appeal process and quality control procedures for disability-related adjudications.

Based on comments to the rule and current naturalization quality procedures, the Service has determined that a separate appeals process and additional quality procedures are unnecessary at this time. The Service, however, has amended the rule to include licensed doctors of osteopathy (DOs) as health care providers who are authorized to complete Form N–648,

Medical Certification for Disability Exceptions. The Service has also made minor changes to the language of the rule to avoid misinterpretation.

**DATES:** This final rule is effective March 22, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jody Marten, Office of Field Operations, Immigration Services Division, Immigration and Naturalization Service, 801 I Street NW., Suite 900, Washington, DC 20536, telephone (202) 305–4770.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 25, 1994, Congress enacted the Immigration and Naturalization Technical Corrections Act of 1994, Public Law 103–416. Section 108(a)(4) of the Technical Corrections Act amended section 312 of the Act to provide an exemption to the United States history and government (civics) requirements for persons with ''physical or developmental disabilities'' or ''mental impairments'' applying to become naturalized United States citizens. This exception complemented an existing exception for persons with disabilities from the English language requirements for naturalization. Enactment of this amendment marked the first time Congress authorized an exception from the civics requirements for any individual applying for naturalization.

On August 28, 1996, the Service published a proposed rule in the **Federal Register** at 61 FR 44227 proposing to amend 8 CFR part 312 to provide for exceptions from the section 312 requirements for persons with physical or developmental disabilities, or mental impairments. The Service received 228 comments from various sources, including Federal and state government agencies, disability rights and advocacy organizations, and private individuals. On March 19, 1997, the Service published a final rule with request for comments in the **Federal Register** at 62 FR 12915. The final rule established an administrative procedure whereby applicants with disabilities could apply for an exception to the section 312 requirements on the newly created public use Form N–648, Medical Certification for Disability Exceptions. Since significant changes were made to the proposed rule, the Service requested additional comments on the final rule.

## Discussion of Comments

The Service specifically requested comments on two areas: appeal procedures and quality control. In the final rule, the Service proposed an enhancement of the current section 336 appeal process to provide, at the appellate level, an independent medical review of all Form N–648 adjudications. The Service also requested comments on any training or additional quality control measures which the Service might adopt to ensure fairness and integrity in disability-related adjudications.

The Service received 45 comments on the final rule, addressing appeal procedures and quality control, as well as other provisions in the rule and the Service's March 19, 1997, filed guidance.

## Appeal Process

The Service received no comments specifically addressing the proposed enhanced appeal procedures. Five commenters, however, did reiterate their belief that the Service should set up a separate appeal process for denials of the Form N–648. The commenters stated that the Form N–648 adjudication should be separate and apart from the overall adjudication of the Form N–400, Application for Naturalization. The commenters also stated that a separate appeal process was necessary to eliminate any additional delays that may occur from adjudication of the Form N–648-delays which could potentially disadvantage persons with disabilities who already face a lengthy administrative process and may suffer a diminished ability to meet the section 312 requirements or complete the naturalization process.

As stated in the March 19, 1997, final rule, the Service does not believe a separate appeal process for the Form N–648 is in accord with the current procedures for adjudicating the Form N–400, Application for Naturalization. The Service believes that consideration of the Form N–648 is one part of the overall adjudication of an individual's Form N–400. All applicants may avail themselves of the hearing procedures already in place in the event the naturalization application is denied, by requesting a hearing on the denial under section 336 of the Act. This is not a strong basis for declining to adopt the commenters' suggestion. With the training Service adjudication officers have received in adjudicating N–648s and disability-based exceptions, the Service remains of the opinion that the current hearing procedure is sufficient for naturalization applicants with disabilities whose Form N–400s have been denied. Finally, with regard to independent medical review of the Form N–648 determination, the Service is currently conducting a pilot with the U.S. Public Health Service (PHS) through an interagency agreement, whereby PHS will provide medical staff to assist the Service with review of the Form N–648s and provide training to adjudicators on relevant medical issues. The Service believes this combined effort should provide for more timely and consistent decisions for naturalization applicants with medical disabilities.

## Quality Control Procedures

Six commenters stated that there should be a separate quality control program for disability-related adjudications. Several commenters also stated that organizations or agencies with disability-related expertise, rather than the Service, should conduct quality control reviews of Form N–648 processing.

As previously stated in the March 19, 1997, final rule, the Service has instituted the Naturalization Quality Procedure (NQP), which establishes quality control procedures for review of Form N–648 adjudications. In addition, Service adjudications officers have been extensively trained on disability-related adjudications and have received supplemental guidance addressing the Service's obligations under section 504 of the Rehabilitation Act, and reiterating the need to provide accommodations and modifications to the testing procedures to allow naturalization applicants who are disabled to complete the naturalization process. The Service believes that these measures are adequate to fulfill the quality control needs noted by the commenters.

## Miscellaneous Comments

Thirteen commenters requested that the Service add licensed doctors of osteopathic medicine to the list of health care providers currently authorized to complete the Form N–648 (licensed medical doctors and licensed clinical psychologists). After a review of individual state licensing procedures, academic requirements, and credentials for licensed medical doctors (MDs) and licensed osteopathic doctors (Dos), it appears to the Service that Dos, like licensed MDs and clinical psychologists, must be experienced in diagnosing persons with physical or mental, medically determinable impairments, and must also be able to attest to the origin, nature, and extent of the medical conditions. In addition, Dos have comparable training and knowledge which the Service believes are sufficient to assess a naturalization applicant's ability to meet the section 312 requirements. The Service therefore has concluded that Dos should be included among the health care

providers authorized to complete the Form N–648. Accordingly, licensed doctors of osteopathic medicine (Dos) have been included at 8 CFR 312.2(b)(2).

Eight commenters requested the Service slightly modify the definition of ''medically determinable'' found at 8 CFR 312.1(b)(3) and 312.2(b)(1), which define ''medically determinable'' as ''* * * an impairment that results from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable *clinical and laboratory diagnostic techniques* to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of [English and Civics] * * *, (emphasis added). The commenters expressed concern that use of the word ''and'' instead of ''or'' in the phrase ''clinical and laboratory diagnostic techniques'' might indicate that applicants are required to submit both clinical and laboratory evidence of their disabilities, though either clinical or laboratory diagnostic information would be adequate to establish the disability. The Service agrees and has made the recommended change in the rule.

Ten commenters requested that the Service issue further policy guidance and clarification of the requirements for reasonable accommodations under section 504 of the Rehabilitation Act of 1975 (Pub. L. 92–112). As stated in the March 19, 1997, final rule, the Service is in full compliance with section 504 of the Rehabilitation Act and provides accommodations and modifications to testing procedures when required. In addition, the Service currently makes regular accommodations and modifications for applicants who are disabled, including conducting off-site testing, interviews, and where authorized, off-site swearing-in ceremonies. The Service is currently working on additional field guidance regarding disability-related adjudications, which will provide additional instructions regarding reasonable accommodations.

Seven commenters stated that the Service should waive the oath of allegiance for persons with disabilities as a reasonable accommodation requirement under section 504 of the Rehabilitation Act of 1975. As stated in the March 19, 1997, final rule, the Service has not addressed the issue of the oath requirement in this rulemaking since Congress did not amend section 337 of the Act in the 1994 Technical Corrections Act. The Service will continue to adhere to the tenets of the Rehabilitation Act and make reasonable accommodations (e.g., off-site oath ceremonies) in cases where individuals are unable, by reason of a disability, to take the oath of allegiance in the customary way. Such accommodations remain available for individuals who are disabled who signal their willingness to become United States citizens and to give up citizenship in other countries.

Twenty-five commenters requested that the Form N–648 be revised so health care providers can complete the form and provide information about the applicant in a more comprehensive and understandable manner. The Service has made minor revisions to the Form N–648 to make it more ''user-friendly.'' On the original Form N–648, health care providers were required to complete question 3, providing a comprehensive medical diagnosis of the applicant and description of why the applicant cannot meet the basic English language and/or U.S. history and civics requirements. In addition, if the applicant has a mental disability or impairment, health care providers were required to include the Diagnostic and Statistical manual of Mental Disorders (DSM) diagnosis. The Service found that many health care providers were not responding fully to question 3. The Service, therefore, has expanded this question, creating three new questions to ensure a more accurate and complete response. The Service also has eliminated the second part of question 4, regarding when an applicant's condition was first manifested. The Service believes this question is addressed in response to one of the other questions.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is amended to add licensed doctors of osteopathy (Dos) as health care providers authorized to complete the Form N–648 and to revise portions of the Form N–648 for easier completion by health care providers.

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 12612**

This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Executive Order 12988, Civil Justice Reform**

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

**Paperwork Reduction Act**

The information collection requirement (Form N–648) which was previously approved by the Office of Management and Budget (OMB) under OMB control number 1115–0205, has been revised. Accordingly, under the Paperwork Reduction Act (PRA), the Service will forward this revised information to OMB for review and approval in accordance with 5 CFR part 1320. Interested parties will have the opportunity to comment on changes to the form under established PRA clearance procedures.

**List of Subjects**

*8 CFR Part 312*

Citizenship and naturalization, Education.

*8 CFR Part 499*

Citizenship and naturalization.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

1. The authority citation for part 312 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

**§ 312.1 [Amended]**

2. Section 312.1(b)(3) is amended in the last sentence by revising the phrase ''clinical and laboratory'' to read ''clinical or laboratory.''

**§ 312.2 [Amended]**

3. Section 312.2(b)(1) is amended in the last sentence by revising the phrase ''clinical and laboratory'' to read ''clinical or laboratory''.

4. Section 312.2(b)(2) is amended in the first sentence by revising the phrase ''medical doctor'' to read ''medical or osteopathic doctor''.

## PART 499—NATIONALITY FORMS

5. The authority citation for part 499 continues to read as follows:

**Authority:** 8 U.S.C. 1103; 8 CFR part 2.

6. Section 499.1 is amended in the table by revising the entry for Form ''N–648'' to read as follows:

**§ 499.1 Prescribed forms.**

* * * * *

| Form No. | Edition date | Title and description |
|---|---|---|
| * | * | * |
| N–648 | 2–4–99 | Medical Certification for Disability Exceptions. |

Dated: February 10, 1999.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 99–3985 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–317–AD; Amendment 39–10904; AD 98–24–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects information in an existing airworthiness directive (AD) that applies to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 series airplanes. That AD currently requires revising the Performance Section of the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to adjust landing distances for landings performed with the anti-icing system active. That AD also requires revising the Limitations Section of the AFM to prohibit certain types of approaches with the anti-icing system active. This document corrects a typographical error that resulted in reference to a supplement of the AFM that does not exist. This correction is necessary to ensure that the appropriate supplement of the AFM is revised.

**DATES:** Effective December 10, 1998.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of December 10, 1998 (63 FR 65050, November 25, 1998).

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** On November 16, 1998, the Federal Aviation Administration (FAA) issued AD 98–24–19, amendment 39–10904 (63 FR 65050, November 25, 1998), which applies to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 series airplanes. That AD requires revising the Performance Section of the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to adjust landing distances for landings performed with the anti-icing system active. That AD also requires revising the Limitations Sections of the AFM to prohibit certain types of approaches with the anti-icing system active. That AD was prompted by a report that increased (i.e., higher than normal) flight idle thrust may occur when the anti-icing system is active. The actions required by that AD are intended to ensure that the flightcrew is advised of appropriate landing field lengths when operating with the anti-icing system active, and that instrument approaches at certain flap settings are prohibited with the anti-icing system active. Increased flight idle thrust when the anti-icing system is active, if not corrected, could result in landing overrun.

**Need for the Correction**

As published, AD 98–24–19 contains a typographical error in paragraph (a)(2) of the AD. That paragraph specified a revision to the Limitations Section of Supplement 12 of the FAA-approved AFM; however, the correct supplement is Supplement 6. Supplement 12 of the AFM does not exist.

The FAA has determined that a correction to AD 98–24–19 is necessary. The correction will ensure that the appropriate supplement of the AFM is revised.

**Correction of Publication**

This document corrects the error and revises the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains December 10, 1998.

Since this action only corrects a typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) by making the following correcting amendment:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Corrected]

2. Section 39.13 is amended by revising the following airworthiness directive (AD):

**98–24–19 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39–10904. Docket 98–NM–317–AD.

*Applicability:* Model EMB–145 series airplanes, equipped with Allison Model AE3007A1/2 engines; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of appropriate landing field lengths when operating with the anti-icing system active, and that instrument approaches at certain flap settings are prohibited with the anti-icing system active, accomplish the following:

(a) Within 10 days after the effective date of this AD, accomplish the actions specified by paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Performance Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of EMBRAER EMB–145 AFM 145/1153, Revision 19, dated October 23, 1998, into the AFM.

**Note 1:** When landing in abnormal configurations per the emergency and abnormal procedures of Section 3 of the AFM and operating with the anti-icing system active, the landing field length multiples specified in Section 3 should be applied to the landing field lengths specified in Supplement 6 of Revision 19 of the AFM.

(2) Revise the Limitations Section of Supplement 6 of the FAA-approved AFM to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

''Flaps 22 instrument approaches with anti-ice on are not approved.''

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision specified in paragraph (a)(1) of this AD shall be done in accordance with EMBRAER EMB–145 Airplane Flight Manual 145/1153, Revision 19, dated October 23, 1998, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| List of Effective Pages, Pages A, S6–i, S6–ii | 19 | October 23, 1998. |
| List of Effective Pages, Page B | 18 | August 6, 1998. |

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of December 10, 1998 (63 FR 65050, November 25, 1998). Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) The effective date of this amendment remains December 10, 1998.

Issued in Renton, Washington, on February 9, 1999.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–3733 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–ANM–08]**

## Amendment of Class E Airspace; Leadville, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the Leadville, CO, Class E airspace by providing additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Lake County Airport.

**EFFECTIVE DATE:** 0901 UTC, May 20, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–08, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

### History

On June 2, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Leadville, CO, Class E airspace area (63 FR 53319). This revision provides the additional airspace necessary to encompass the GPS Runway 16 SIAP for the Lake County Airport.

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, is published Paragraph 6005, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to 14 CFR part 71 modifies Class E airspace at Leadville, CO, by providing the additional airspace at Lake County Airport. This modification of airspace enlarges the 700-foot Class E area to meet current criteria standards to accommodate the landing and the holding procedures for the SIAP. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Lake County Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CO E5 Leadville, CO [Revised]**

Lake County Airport, CO
(Lat. 39°13′13″N., long. 106°18′58″W.)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at 39°33′00″N., long. 106°30′00″W.; to lat. 39°33′00″N., long. 106°00′00″W.; to lat. 38°51′00″N., long. 106°00′00″W.; to lat. 38°51′00″N., long. 106°15′00″W.; to lat. 39°09′00″N., long. 106°30′00″W.; to point of beginning.

* * * * *

Issued in Seattle, Washington, on February 1, 1999.

**Daniel A. Boyle,**

*Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 99–4021 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 98–ANE–95]**

### Amendment to Class E Airspace; Rockland, ME

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This notice confirms the effective date of a direct final rule which revises the Class E airspace area at Rockland, ME, due to the relocation of the Sprucehead Non-Directional Beacon (NDB) and to provide adequate controlled airspace for two new standard instrument approaches to the Rockland, Knox County Regional Airport (KRKD).

**EFFECTIVE DATE:** The direct final rule published at 63 FR 71218 and corrected to read as published at 64 FR 3835, is effective 0901 UTC, January 28, 1999.

**FOR FURTHER INFORMATION CONTACT:** David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7523; fax (781) 238–7596.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on December 24, 1998 (63 FR 71218), and published a correction on January 26, 1999 (64 FR 3835). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule became effective on that date.

Issued in Burlington, MA, on February 2, 1999.

**Bill Peacock,**

*Manager, Air Traffic Division, New England Region.*

[FR Doc. 99–4019 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 37

**[Docket No. RM95–9–006]**

### Open Access Same-Time Information System and Standards of Conduct

Issued February 10, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order denying rehearing.

**SUMMARY:** The Federal Energy Regulatory Commission (the Commission) denies two requests for rehearing of an order issued on June 19, 1998 (*Open Access Same-Time Information and Standards of Conduct*) that, among other things, requires the unmasking of source and sink information and establishes an interim on-line discount policy.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**
Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–1283
Paul Robb (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2702
Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, (202) 208–0321

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

## Order Denying Rehearing

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In this order, we deny two requests for rehearing of an order that, among other things, requires the unmasking of source and sink information and establishes an interim on-line discount policy. *Open Access Same-Time Information and Standards of Conduct,* 83 FERC ¶ 61,360 (1998) (June 18 Order) [63 FR 38884, July 20, 1998].

## Background

In the June 18 Order, the Commission: (1) required transmission providers to unmask the source and sink information reported on OASIS transmission service request templates at the time that the transmission provider updates the transmission reservation posting to show the customer's confirmation that it wishes to finalize the transaction; (2) established interim procedures for the on-line negotiation of transmission service price discounts; and (3) updated the OASIS Standards and Communications Protocols Document.[1]

Timely requests for rehearing were filed by Electric Power Supply Association (EPSA) and by Enron Power Marketing, Inc. (EPMI). Collectively, the rehearing requests raise four issues, which we will address separately below.

*Discussion*

1. Information To Be Unmasked

On rehearing, EPSA seeks clarification of whether the June 18 Order required disclosure of the identity of pertinent control areas only or of the respective bus bars of generators and loads. EPSA seeks rehearing of the June 18 Order to the extent that it compels the disclosure of specific information about generator or load bus bars, rather than simply the disclosure of information on control areas. EPSA also argues that the information to be disclosed on source and sink should be uniform and not vary from transmission provider to transmission provider.

In the June 18 Order, we stated that, [s]ource and sink information for point-to-point transmission service describes the location of the generators and the ultimate load in an electric system sense, and does not necessarily identify sellers and buyers by name. In accordance with the convention of the transmission provider under its individual Open Access Tariff (the Pro Forma Tariff allowed each transmission provider to determine this for itself in its Open Access Tariff filing) this source and sink information may routinely include only the identities of the respective control areas (*e.g.*, in the case of point-to-point transmission across a transmission provider's system, the point of receipt is identified as a control area and the point of delivery is similarly identified), or it may include the identities of the respective bus bars of the particular generators and loads (*e.g.*, in the case of transmission within, out of or into a transmission provider's transmission system).[2]

The June 18 Order made clear that a transmission provider's individual Open Access Tariff determines what source and sink information is to be disclosed by a customer as part of a completed request for transmission service. Depending on the terms of a transmission provider's individual Open Access Tariff, all of the transmission provider's customers may uniformly be required to provide source and sink information that includes the identities of the respective control areas only (*e.g.*, in the case of point-to-point transmission across a transmission provider's system, both the point of delivery and point of receipt are identified as control areas). Another transmission provider's Open Access Tariff may uniformly require the customers to reveal the identities of the respective bus bars of the particular generators and loads. However, in either case, all of the transmission provider's customers are treated in a comparable manner. We expect that the tariff information requirements developed by the transmission provider are adequate to evaluate transmission service requests and facilitate service. A transmission provider may not require more detailed information from some customers, while requiring less specific information from other customers (including requests from its own wholesale merchant function or affiliates). Nothing EPSA has raised on rehearing has persuaded us to eliminate the discretion that transmission providers are afforded on this matter.

Moreover, EPSA has not offered a compelling argument as to why a transmission provider should not be allowed to require the disclosure of specific bus bar information. The June 18 Order did not offer a definition of source and sink information applicable to all circumstances. This omission was not an oversight. In the Commission's view, it would be premature for the Commission to dictate such a definition at the present time for several reasons. First, this is still an evolving area and it would be premature to draft a definition that would restrict further developments in the industry. By having the Commission define ''source'' and ''sink,'' these developments may be impeded. Second, in any event, before drafting such a definition, we would invite input from all interested persons and this has not yet occurred. Third, while conceivably we could attempt to draft a definition of source and sink for purposes of OASIS unmasking, while

[1] 83 FERC at 62,453.

[2] *Id.* at 62,453, n.14.

leaving the matter undefined for other purposes, this would be both cumbersome and confusing.

2. Impact of Unmasking on the Short-Term Market

On rehearing, EPMI argues that the Commission failed to consider the harmful impact unmasking would have on the short-term market. Specifically, EPMI argues that the Commission failed to consider that power marketers would lose the benefits of follow-on short-term transactions and that this would drive them out of this market. EPMI also argues that the benefits of disclosure are minimal. Together, EPMI argues, these factors should lead the Commission to reverse the findings on unmasking of the June 18 Order.

We disagree. As we noted in the June 18 Order,[3] our decision to require that certain arguably sensitive business information be disclosed is consistent with judicial directives to focus on the needs of the overall market, rather than focusing on protecting the interests of individual competitors within the market.

The June 18 Order contained an extensive discussion of *Alabama Power Company* v. *Federal Power Commission*, 511 F.2d 383, 390–91, D.C. Cir. (1974), a case where the court of appeals affirmed our refusal to amend a rule that required affected utilities to publicly disclose their monthly Form No. 423 reports of fuel purchases. The court in *Alabama Power* considered various arguments that, on the one hand, ''disclosure of information would lead to bargaining disadvantages in future fuel contract negotiations,'' [4] and that, on the other hand, any bargaining disadvantage as a result of disclosure would merely reflect the removal of information imperfections in an otherwise competitive market thereby facilitating efficient allocation of resources.[5]

The court concluded that the dissemination of information in a competitive market tends to ''facilitate prompt adjustment to the market clearing price by all parties to transactions.'' [6]

Moreover, the court found that,

> a sudden improvement in the availability of information may deprive a buyer of an advantage he enjoyed when, under more imperfect dissemination, he exploited a seller's ignorance of the market price. * * * Generally, however, laws and practices to safeguard competition assume that its prime benefits do not depend on secrecy of agreements reached in the market.[7]

EPMI would have the Commission protect a market niche that some market participants may have enjoyed by virtue of possessing market-related information that has not been available to others. As in *Alabama Power*, by requiring disclosure, the Commission is merely removing information imperfections in an otherwise competitive market,[8] thereby facilitating the efficient allocation of resources.[9]

While not specifically mentioning the *Alabama Power* case in its rehearing request, EPMI seeks to sidestep *Alabama Power*'s precedent by characterizing the potential harm to itself and other power marketers (that it argues might result from unmasking source and sink information) as harmful to the short-term market as a whole. This characterization ignores that power marketers are only one category of participant in the short-term market, and that their interests may not be entirely consonant with those of the short-term market as a whole.

The June 18 Order gave full consideration to the possible harmful competitive impact of unmasking on power marketers. These factors were carefully weighed against the expected benefits of unmasking to the market as a whole. These benefits included: (1) promoting competition in the overall market; (2) fostering greater public confidence in the integrity of OASIS postings; (3) improving the open access use of transmission systems comparable to that enjoyed by transmission providers; and (4) allowing better monitoring of discriminatory practices.[10] In our view, EPMI underestimates the benefits of unmasking and overestimates the possible harmful impact of unmasking. Understandably, EPMI is concerned with protecting its own market position. However, by necessity, the Commission's responsibilities demand a broader perspective. We find that the overall benefits of unmasking outweigh the potential harm to power marketers. Accordingly, we will deny EPMI's rehearing request on this issue. However, EPMI or others may request that we revisit this issue in the future.

3. Time of Disclosure

EPSA seeks rehearing of the June 18 Order's decision to require disclosure of source and sink information at the time that the transmission provider updates the transmission reservation posting to show confirmation of the transmission provider's acceptance of the transmission customer's request. EPSA argues that this would be premature and that disclosure should not be made until the underlying transmission and power sale components of the transaction are completed.

While EPSA's proposal would not have a large impact on short-term transactions, under EPSA's proposed timetable, in the case of a longer-term transaction, *e.g.*, a request for monthly service, information about the transaction would not be disclosed until more than a month after the OASIS negotiations had been completed. Likewise, under EPSA's proposed timetable, requests for yearly service would not be unmasked until more than a year after they are negotiated. We find these results undesirable and contrary to our goal of promoting competition through the timely disclosure of market information. Our action would allow the Commission and customers to detect discriminatory practices in a more timely manner. Accordingly, we will deny EPSA's request for rehearing on this issue.

4. Feasibility of On-Line Negotiation of Discounts

On rehearing, EPMI also argues that requiring the on-line negotiation of discounts is not feasible, and will result in discounts no longer being offered. At this time, we will not modify our requirement that discounts be negotiated on the OASIS by an unproven prediction that this might diminish the availability of negotiated discounts. At this stage in the process, there is no evidence available (nor could there be) that would either validate or contradict EPMI's assertion. No such evidence would be available until the requirement for on-line discounting is implemented and we are able to assess whether discounts continue to be negotiated or not. However, EPMI or others may request that we revisit this issue in the future.

The Commission orders:

The requests for rehearing of EPSA and EPMI are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Bailey dissented with a separate statement attached.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

BAILEY, Commissioner, *dissenting*

I continue to dissent from the majority's decision to require public disclosure of source and sink information on the OASIS at

[3] 83 FERC at 62,456, n.48.

[4] 511 F.2d at 390.

[5] *Id.*

[6] *Id.* at 391, n.13.

[7] *Id.*

[8] EPMI has not alleged on rehearing that the market for the sale of wholesale electric power is not a competitive market.

[9] 511 F.2d at 391, n.13.

[10] 83 FERC at 62,456 & n. 48.

the time of customer confirmation of service. I continue to adhere to my rationale for dissenting as articulated in the June 18, 1998 order in this proceeding. *See Open Access Same-Time Information System and Standards of Conduct*, 83 FERC ¶ 61,360 at 62,467–69 (1998) (Bailey, Commn'r, dissenting in part). I continue to believe that the public's and the Commission's need for source and sink information, at the time of customer confirmation, for the purpose of detecting possible undue discrimination or preference in the provision of transmission service does not outweigh the Commission's interest in promoting competitive markets by protecting against the disclosure of commercially sensitive information.

I add only two points to my earlier dissent on the subject. First, I fail to see any reason why another balance cannot be struck that provides information necessary for market monitoring and enforcement while maintaining respect for (what we are informed is) commercially sensitive information. Specifically, I do not understand how the Commission's very legitimate interest in monitoring markets and protecting against the abuse of monopoly power by transmission providers would be jeopardized by further delaying the public disclosure of source and sink information for 30 additional days after finalization of the transaction and the transmission provider's update of its transmission reservation posting. (I agree with the majority that EPSA's request to delay disclosure until after completion of the power sale and accompanying transmission service might not allow for timely disclosure of information concerning longer-term transactions; I would shorten the requested delay to 30 days to avoid this problem.) Nor do I understand why the Commission should not require transmission providers uniformly to provide source and sink information on a control area basis, as requested on rehearing by EPSA. Such a requirement would have the dual benefit of better protecting commercially sensitive information while promoting uniformity among OASIS sites, to the benefit of all transmission customers.

Second, I view the majority's disposition as overly dismissive of the role of power marketers and intermediaries in competitive markets. I am not prepared to decide, as does the majority (slip op. at 3–5), that the competitive interest of marketers is or may be inconsistent with the competitive interest of the power market as a whole. I am not willing to dismiss cavalierly the objections of Enron and EPSA that marketers may be driven out of short-term markets if forced to disclose immediately the details of the transactions they arrange. Neither I nor any of my colleagues can be entirely sure whether immediate disclosure of this type of sensitive information will drive market participants out of certain markets, or whether the ''overall market'' is improved or degraded with the combination of more market information and fewer market participants.

In these circumstances, I would strike another balance between information disclosure and concern for the commercial sensitivity that is more respectful of the important arguments presented on rehearing. As I recently explained in a slightly different context:

The Commission must have considerable information from the companies it regulates to continue to ensure that they operate in a manner consistent with their statutory responsibilities; however, it remains crucial for the Commission to consider at what point the usefulness of information becomes outweighed by the competitive implications of disclosure.

*American Electric Power Company and Central and South West Corporation*, Docket Nos. EC98–40–000, *et al.*, slip op. at 3–4 (Bailey, Commn'r, dissenting in part). I believe that point has been crossed in the present circumstances.

Vicky A. Bailey,

*Commissioner.*

[FR Doc. 99–3952 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF STATE

## 22 CFR Part 41

**[Public Notice 2926]**

## Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended—Waiver by Secretary of State and Attorney General of Passport and/or Visa Requirements for Certain Categories of Nonimmigrants

**AGENCY:** Department of State.

**ACTION:** Interim rule.

**SUMMARY:** Current regulations contain a joint Secretary of State/Attorney General (Secretary/AG) list of waivers of visas and/or passports for certain nonimmigrants including a provision for nationals of the British Virgin Islands (BVI) entering the United States (U.S.) Virgin Islands. This rule extends that provision to include nationals of the BVI who seek to enter the U.S. mainland temporarily for business or pleasure through the port-of-entry at St. Thomas, U.S. Virgin Islands.

**DATES:** This rule is effective February 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204.

**SUPPLEMENTARY INFORMATION:**

### Why Is This Being Done?

The U.S. consulate at St. Johns, Antigua, is one of a number of small posts the State Department has closed in recent years for budgetary reasons. This has created a serious inconvenience for nationals of the BVI who, if they wished to visit the United States, have had to apply for a nonimmigrant visa by either going to Barbados, the nearest consular office, or applying by mail which is time-consuming. The BVI government asked that some ameliorating action be taken if possible. The Department and the Immigration and Naturalization Service (INS), after a joint study, decided that waiving the nonimmigrant visa for visitors for business and pleasure was the most appropriate way to ease the situation and still maintain the safeguards of the Immigration and Nationality Act (INA).

### What Is the Legal Basis for This Action?

Section 212(d)(4) of the INA provides that the Secretary and AG may jointly waive visa and/or passport requirements on the basis of reciprocity for nationals of foreign contiguous territories or adjacent islands and residents thereof who have a common nationality with such nationals. That is the basis for the current regulations at 22 CFR 41.2 and for their expansion with this rule.

### What Is the Difference Between This and What Is Now in the Regulations?

The current regulation only permits the entry of BVI nationals not in possession of a valid visitor's visa into the U.S. Virgin Islands. If they wish to enter any other part of the United States, they must not only have a passport, but also a visa. This amendment will permit visitors for business or pleasure, that is, persons described in INA 101(a)(15)(B), to enter without a visa if they meet certain other requirements. They must have a Certificate of Good Character issued by the Royal Virgin Islands Police Department, must leave through the port of St. Thomas by air directly for the United States, and must satisfy the immigration officer at that pre-inspection station that they are admissible in all respects. A BVI national wishing to enter the United States for any other purpose as a nonimmigrant must have a nonimmigrant visa. See the Immigration and Naturalization Service rule published elsewhere in this issue of the **Federal Register**.

### Regulatory Analysis and Notices

*Interim Rule*

The implementation of this rule as an interim rule, with a 60-day provision for post-promulgation public comments, is based on the ''good cause'' exceptions set forth at 5. U.S.C. 553(b)(3)(B) and 553(d)(3). It provides a benefit to the persons affected and thus to U.S. businesses patronized by them. It also provides a significant workload reduction for the Department. Delay of

the benefit for public notice and comment is unnecessary.

*The Regulatory Flexibility Act*

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

*E.O. 12988 and E.O. 12866*

This rule has been reviewed as required under E.O. 12998 and determined to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department to ensure consistency therewith. The rule does not directly affect states or local governments or Federal relationships and does not create unfunded mandates.

*5 U.S.C. Chapter 8*

As required by 5 U.S.C., chapter 8, the Department has screened this rule and determined that it is not a major rule, as defined in 5 U.S.C. 80412.

*Paperwork Reduction Act*

This rule will eliminate certain paperwork requirements, rather than adding to them.

**List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Passports and visas.

In view of the foregoing, 22 CFR part 41 is amended as follows:

## PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

**Authority:** 8 U.S.C. 1104.

2. Section 41.2(f) is revised to read as follows:

* * * * *

**§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

(f) Nationals and residents of the British Virgin Islands.

(1) A national of the British Virgin Islands and resident therein requires a passport but not a visa if proceeding to the United States Virgin Islands.

(2) A national of the British Virgin Islands and resident therein requires a passport but does not require a visa to apply for entry into the United States if such applicant:

(i) Is proceeding by aircraft directly from St. Thomas, U.S. Virgin Islands;

(ii) Is traveling to some other part of the United States solely for the purpose of business or pleasure as described in INA 101(a)(15)(B);

(iii) Satisfies the examining U.S. Immigration officer at that port of entry that he or she is admissible in all respects other than the absence of a visa; and

(iv) Presents a current Certificate of Good Conduct issued by the Royal Virgin Islands Police Department indicating that he or she has no criminal record.

* * * * *

Dated: November 2, 1998.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 99–3983 Filed 2–17–99; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 100

**[CGD01–98–125]**

**RIN 2115–AE46**

## Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing permanent special local regulations that will be enacted annually for the annual Greenwood Lake Powerboat Classic. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the southern end of Greenwood Lake, New Jersey.

**DATES:** This final rule is effective March 22, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On November 13, 1998, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey in the **Federal Register (**63 FR 63426). The Coast Guard did not receive any letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

**Background and Purpose**

The Greenwood Lake Powerboat Association and the West Milford, New Jersey Chamber of Commerce sponsor this annual high-speed powerboat race with approximately 60 race boats, up to 20 feet in length, participating in the event. An average of 125 spectator craft view this event each year. The race will take place on the southern end of Greenwood Lake, New Jersey. The regulated area encompasses all waters of Greenwood Lake north of 41°08′N and south 41°09′N (NAD 1983). The shoreline comprises the eastern and western boundaries. The northern boundary will be marked by 6 temporary buoys. The more narrow southern boundary will be marked by 4 temporary buoys. This regulation is effective annually from 10 a.m. until 7 p.m. on Saturday and Sunday, the first weekend before Memorial Day weekend. The race boats will be competing at high speeds with numerous spectator craft in the area, creating an extra or unusual hazard in the navigable waterway. This regulation prohibits all vessels not participating in the event, swimmers, and personal watercraft from transiting this portion of Greenwood Lake during the races. It is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters. Marine traffic will be able to transit through the area at various times between races at the direction of the Coast Guard Patrol Commander.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the southern end

of Greenwood Lake during the races, the effect of this regulation will not be significant for several reasons: the limited duration that the regulated area is in effect, marine traffic is able to transit through the regulated area at various times between races at the direction of the Coast Guard Patrol Commander, the event takes place on an inland lake that has no commercial traffic, it is an annual event with local support, and advance notifications will be made to the local maritime community via facsimile. Vessels, swimmers, and personal watercraft of any nature not participating in this event will be unable to transit through or around the regulated area during this event unless authorized by the Coast Guard Patrol Commander.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates**

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be effected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

## PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.120 to read as follows:

**§ 100.120 Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey.**

(a) *Regulated area.* All waters of Greenwood Lake, New Jersey north of 41°08′ N and south of 41°09′ N (NAD 1983). The shoreline comprises the eastern and western boundaries.

(b) *Special local regulations.*

(1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually on Saturday and Sunday from 10 a.m. until 7 p.m. on the first weekend before Memorial Day weekend.

Dated: February 5, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 99–3941 Filed 2–17–99; 8:45 am]

**BILLING CODE 4910–15–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD13–99–001]**

## Drawbridge Operations Regulations; Columbia River, Oregon , Washington

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Thirteenth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Burlington Northern Santa Fe Railroad Bridge across the Columbia River, mile 105.6, between Vancouver, Washington, and Portland, Oregon. This deviation allows the owner to close the swing span from 6 a.m. February 28, to 6 a.m. March 4, 1999. The closure will accommodate major repair to the center bearing and other mechanical components. The approved temporary deviation is contingent upon coincidence with Columbia River navigation lock maintenance closure.

**DATES:** This deviation is effective from 6 a.m. February 28, 1999, to 6 a.m. March 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

**SUPPLEMENTARY INFORMATION:** The Burlington Northern Santa Fe Railroad Bridge has a deteriorating center bearing which eventually could cause failure of alignment and operation of the swing span. This closure will enable the owner to repair this essential component as well as some others of lesser importance. While the Columbia River bears substantial commercial navigation in this reach, the Coast Guard anticipates that the impact will be less during the upstream lock maintenance closure currently scheduled for the same period. Recreational boating traffic is minimal at this season.

The bridge normally opens on signal at all times for the passage of vessels. This temporary deviation would permit

the swing span to remain closed from 6 a.m. February 28 to 6 a.m. March 4, 1999.

Dated: February 3, 1999.

**Paul M. Blayney,**

*Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.*

[FR Doc. 99–3943 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP Los Angeles-Long Beach, CA; 98–012]**

**RIN 2115–AA97**

## Safety Zone; Santa Barbara Channel, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the United States around the Stearns Wharf pier complex located in Santa Barbara, California. The safety zone is necessary to ensure the safety of the public during the demolition and reconstruction of the pier. The Coast Guard is establishing a safety zone in all navigable waters falling within a rectangular box extending 100 feet from the outer limits of all sides of Stearns Wharf, beginning at the seaward end of the wharf and extending back along the wharf 600 feet towards shore. For reference purposes, the seaward end of the wharf is located at 34°–23′–30″N, longitude: 119°–41′–10″W. This safety zone will be in effect from December 9, 1998, 12:00 p.m. (PDT), until March 31, 1999, 12:00 p.m. (PDT). Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

**DATES:** This regulation will be in effect from December 9, 1998, 12:00 p.m. (PDT) until March 31, 1999, 12:00 p.m. (PDT). If the need for this safety zone terminates before March 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

Comments must be received on or before April 19, 1999.

**ADDRESSES:** Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office Los Angeles-Long Beach, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying in the Port Safety Division of Coast Guard Marine Safety Office of Los Angeles-Long Beach from 9 a.m. to 4 p.m. (PDT), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Rich Sorrell, Marine Safety Detachment Santa Barbara, 111 Harbor Way, Santa Barbara, CA 93109; (805) 962–7430.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

In accordance with 5 U.S.C. 553, a notice of proposed rule making (NPRM) was not published for this regulation and good cause exists for making it effective prior to or less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the need for the pier construction arose from an unanticipated fire and the demolition and reconstruction of the pier has already begun.

Although this rule being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed in **ADDRESSES** in this preamble. Comments must be received on or before April 19, 1999. Those providing comments should identify the docket number for the regulation (COTP Los Angeles-Long Beach, CA; 98–012) and also include their name, address, and reason(s) for each comment presented. Based upon the comments received, the regulation may be changed.

The Coast Guard plans no public meeting. Persons may request a public meeting by writing the Marine Safety Office Los Angeles-Long Beach at the address listed in **ADDRESSES** in this preamble.

### Discussion of Regulation

This safety zone is necessary to safeguard all personnel and property during the extensive repairs and reconstruction of Stearns Wharf. The activities surrounding the demolition and construction pose a direct threat to the safety of surrounding vessels, persons, and property, and create an imminent navigational hazard. This safety zone is necessary to prevent spectators, recreational and commercial craft from the hazards associated with the reconstruction. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port Los Angeles-Long Beach or a designated representative thereof.

### Regulatory Evaluation

This temporary regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1997). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under Paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

### Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq).*

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

### Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Rick Sorrell, Coast Guard Marine Safety Detachment, Santa Barbara, CA, at (805) 962–7430.

**Federalism**

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this temporary regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(g), it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis checklist is available for inspection and copying and the docket is to be maintained at the address listed in **ADDRESSES** in the preamble.

**Unfunded Mandates**

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for 33 CFR part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new section 165.T11–061 is added to read as follows:

**§ 165.T11–061 Safety Zone: Santa Barbara Channel, CA**

(a) *Location.* The following area is established as a safety zone: all navigable waters falling within a rectangular box extending 100 feet from the outer limits of all sides of Stearns Wharf, beginning at the seaward end of the wharf and extending back along the wharf 600 feet towards shore. For reference purposes, the seaward end of the wharf is located at 34°24′30″N, longitude: 119°41′10″W.

(b) *Effective Dates.* This safety zone will be in effect from December 9, 1998, 12:00 p.m. (PDT) until March 31, 1999, 12:00 (PDT). If the need for this safety zone terminates before March 31, 1999, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

Dated: December 9, 1998.

**G.F. Wright,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.*

[FR Doc. 99–3768 Filed 2–17–99; 8:45 am]

**BILLING CODE 4910–15–M**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD09–97–002]**

**RIN 2115–AE84**

## Regulated Navigation Area; Air Clearance Restrictions at the Entrance to Lakeside Yacht Club and the Northeast Approach to Burke Lakefront Airport in the Cleveland Harbor, OH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard has established a regulated navigation area at the entrance to the Lakeside Yacht Club in Cleveland Harbor, Ohio, underneath the northeast approach to the Burke Lakefront Airport, to avoid conflict with the safety parameters for an instrument-guided aircraft approach slope. This regulation creates a set of restricted areas, some of which prohibit docking of vessels of certain heights, others require vessels of certain heights to obtain clearance from the airport before entering or leaving the entrance to the yacht club during times when the instrument system is in use. Vessels with masts less than 41 feet above the waterline are not affected by this rule. Vessels with masts between 41 and 45 feet above the waterline are restricted from one location. Vessels with masts between 45 and 95 feet above the waterline are required to obtain a routine clearance by radio or telephone before navigating through the area. Vessels with masts between 53 and 95 feet above the waterline are limited to certain specified areas for docking. Vessels with masts 95 feet or more above the waterline, none of which currently uses the area, are prohibited from any entry into the area.

**DATES:** This final rule is effective March 22, 1999.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 441992060, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 216–902–6050.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Lynn Goldhammer, Assistant Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District, Room 2069, 1240 E. Ninth Street, Cleveland, Ohio, 44199–2060, (216) 902–6050.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

On August 7, 1998, the Coast Guard published a notice of proposed rulemaking entitled Regulated Navigation Area—Air Clearance Restrictions at the Northeast Entrance to Lakeside Yacht Club and Approach to Burke Lakefront Airport in Cleveland Harbor, OH in the **Federal Register** (63 FR 152). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

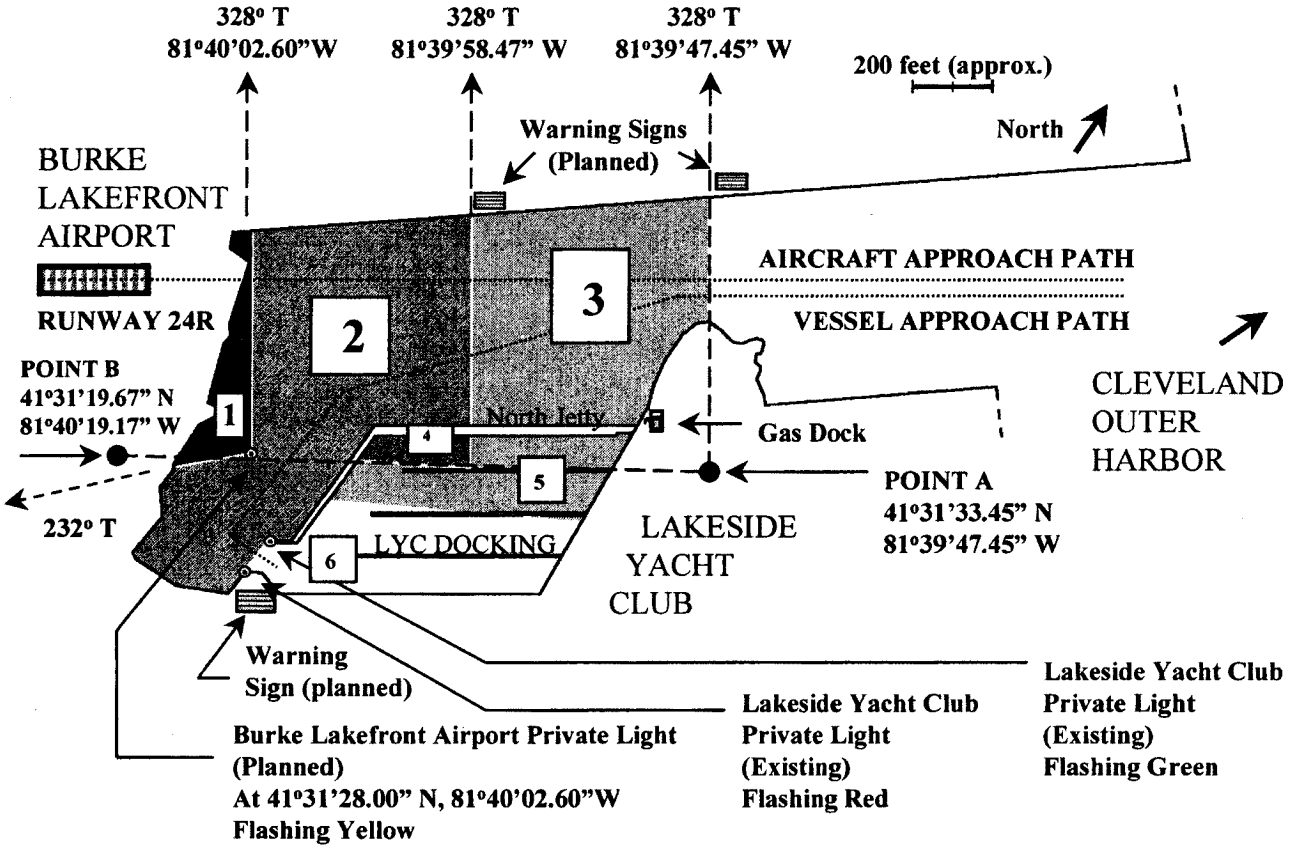
**Background and Purpose**

Burke Lakefront Airport, located next to Cleveland Harbor in Cleveland, Ohio, has installed an instrument-guided approach system for the northeast approach to the Airport. The new system is important to maintaining safe and commercially viable airport operations. Under Federal Aviation Administration flight standards, this instrument-guided approach, during times when available for use, requires a

more extensive zone of air clearance than the existing visual approach. The Lakeside Yacht Club is located in Cleveland Outer Harbor near the northeast end of the runway, and the entrance channel leading into the yacht club docks is immediately adjacent to the end of the runway (Runway 24R). The configuration of the area between the airport and the yacht club is depicted in Illustration 1 here.

BILLING CODE 4910–15–M

**Illustration 1. Approach to Lakeside Yacht Club and Minimum Air Clearances for Burke Lakefront Airport Instrument Approach**




**Restricted Areas, Based on an Extreme High Water Level of 577' Mean Sea Level (MSL)**

| *Area* | *MSL Air Clearance* | *Applicable Mast Heights* | *Restrictions* |
|---|---|---|---|
| 1 | 618 | 41 feet | No entry |
| 2 | 622 | 45 feet | No entry unless cleared, during designated times |
| 3 | 640 | 63 feet | No entry unless cleared, during designated times |
| 4 | 630 | 53 feet | No entry (no dockage) |
| 5 | 640 | 63 feet | No entry (no dockage) |
| 6 | 672 | 95 feet | No entry (no use of Yacht Club areas) |

BILLING CODE 4910–15–C

The shaded areas in the illustration are those areas over water where the safety parameters of the instrument approach system create necessary restrictions on the height of vessel structures, in feet, with clearance levels indicated in both mean sea level (MSL) and height over high water (applicable mast heights) based on an extreme high water level of 577 feet MSL. The actual boundaries of the area are defined by exact geographic coordinates specified in the regulation, based on calculations from the Federal Aviation Administration. Illustration 1 is an approximate guide to how those coordinates and areas fall over the area when those coordinates are mapped on to a nautical chart by the National Oceanic and Atmospheric Administration.

The Airport proposal raised two questions: (1) What restriction on vessel heights would be required to avoid conflict with the approach slope safety parameters? (2) How can those parameters be protected without undue restriction on vessel navigation and the operation of the yacht club?

*Clearance Requirements.*

With the instrument-guided approach installed by Burke Lakefront Airport and the Federal Aviation Administration, the center line of the approach path comes down along the northwest side of the Lakeside Yacht Club entrance channel. This creates the need for an air clearance area which becomes lower as the approach nears the southwest end of the channel. In addition to the main clearance area directly under the main approach path, there is a slanted clearance area to the side of the main approach path which accounts for the skewing of the air clearance areas over the south end of the channel. This air clearance area extends down to as low as 618 feet above mean sea level (MSL) at the south end of the entrance channel. The main part of the channel used by vessels to transit in and out of the Lakeside Yacht Club docks (which normally bear to the east side of the entrance along the south extension of the jetty, where there is the best water depth) is covered by an air clearance area ranging from 622 to 640 feet above MSL. Although there are no measurable tides on the Great Lakes, water levels vary according to yearly climate, season, and weather. Water levels tend to run highest during the summer. In addition, they are subject to short-term increases or sudden oscillations due to wind, storm surges and geologic disturbances. Therefore, safety parameters have been based on the highest recorded levels. The long-term monthly average level (1860 through 1990) for Cleveland is 572.2 feet MSL, but levels have reached a monthly average high of 573.9 feet MSL (July 1996) and an all-time hourly high of 576.3 feet MSL (in February 1997). Rounding up this all-time hourly high, which reflects the variations which can be created by storm conditions, suggested 577 MSL as the safe figure for high water to be subtracted from the mean sea level air clearance. This is the basis for the ''applicable structure or equipment heights'' assigned to the various restricted areas marked on illustration 1. One of these restricted areas, area no. 1, which applies to vessels with mast heights as low as 41 feet, in fact covers an area of shallow and obstructed water outside of the normal route in and out of the club, and therefore does not actually affect the normal navigation of any sailboats as long as they avoid accidentally wandering into that area. The relevant limit, at which some boats become affected, is therefore the mast height limit of 45 feet within restricted area no. 2.

*Yacht Club Operations*

The yacht club currently accommodates a number of sailboats with mast heights ranging from 45 to 65 feet above the water line, including sailboats belonging to members of the Club and others visiting the Club, which would be affected by these restrictions. There is sufficient available room for docking vessels with masts as high as 95 feet in Club facilities located further away from the end of the runway than the entrance channel, without intruding into the glide slope safety parameters. The primary problem, therefore, is to avoid a conflict during the time that sailboats with masts of 45 feet or more are entering or leaving the entrance channel. In discussions held between representatives of the yacht club and the Airport, it was agreed that the interests of both parties could be accommodated by a system for clearing vessels with high masts for transit with the traffic control tower. Vessel operators will be advised of the requirement to obtain clearance by a regulatory notice on the nautical charts, various warning signs to be provided by the Airport, and notice to the members of the yacht club. In addition, the airport has built a permanent fixed marker with a light alongside the entrance channel, marking the outer corner of restricted area no. 1 in order to facilitate the safe passage through the preferred half of the channel. Clearance for transit through areas no. 2 and 3 must be obtained by telephone or radio call to the Burke Lakefront Air Traffic Control Tower, with radio calls being made on marine band channel 14. This is an area wholly within the protection of Cleveland Harbor, with additional protection from wave action provided by the airport landfill to the north. It therefore should be safe for vessels to temporarily hold up outside the entrance to the yacht club on the rare occasions when clearance is required and cannot be granted. There is also a fueling dock on the outside of the entrance, within area no. 3, providing a location where most vessels requiring clearance can temporarily tie up if necessary. Vessels with masts 63 feet in height and over would need to obtain clearance further in advance before entering area no. 3 and the fueling dock location. Times when a vessel would actually be required to hold up will be rare, because it is not necessary when aircraft make normal visual approaches, and the expected time that a vessel will have to hold up is a maximum of fifteen minutes. In addition, this regulation provides for advance group clearances to be provided for the convenience of the yacht club to accommodate planned events such as regattas on weekends.

Given the agreement between the two relevant parties, the airport's commitment to provide lighted warning signs, a lighted channel marker, and clearance procedures, and the limited number of larger sailboats which may be affected by the clearance requirement, the Coast Guard views this rule as a reasonable and safe solution as long as both parties maintain their existing commitment to cooperate in making the clearance system work. In order to assure the Federal Aviation Administration that conflict will be avoided, and to insure the safety of both vessels and aircraft, the Coast Guard has promulgated this vessel clearance requirement as a regulated navigation area.

**Discussion of Comments and Changes**

During the 90 days since the Notice of Proposed Rulemaking was published discussing the air clearance restrictions at the entrance to the Lakeside Yacht Club, the Coast Guard has received no comments and has made no changes to the original proposed rule.

*Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with

populations of less than 50,000. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

*Collection of Information*

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

*Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Environment*

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation, and has so certified in the docket file.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; and 49 CFR 1.46.

2. Add § 165.906 to read as follows:

### § 165.906 Lakeside Yacht Club in Cleveland Harbor, Cleveland, OH—regulated navigation areas.

(a) *Restricted Areas.* The following are areas inside Cleveland Harbor which are subject to navigational restrictions based on the height of vessel masts as specified in paragraph (b) of this section. For the purpose of this section, the term ''mast'' will be used to include masts, antennae or any other portion of the vessel extending above the waterline. All of these areas are inside the ''Lakeside Yacht Club entrance channel,'' defined as the water area between the Lakeside Yacht Club jetties and the Burke Lakefront Airport landfill, or inside the ''Lakeside Yacht Club docks,'' defined as the docking area inside the Lakeside Yacht Club jetties and immediately adjacent to Lakeside Yacht Club.

(1) *Restricted area no. 1.* Restricted area no. 1 is the water area on the southwest end of the Lakeside Yacht Club entrance channel which is southwest of a line running 328° T and northwest of a line running 232° T from a point at 41°31′28.00″ N, 81°40′02.60″ W, which point is marked by a fixed flashing yellow light.

(2) *Restricted area no. 2.* Restricted area no. 2 is the water area of the Lakeside Yacht Club entrance channel which is outside restricted area no. 1 and the entrance to the Yacht Club docking area, and southwest of a line running 328° T from the intersection of 81°39′58.47″ W and reference line running between point A at 41°31′33.45″ N, 81°39′47.45″ W and point B at 41°31′19.67″ N, 81°40′19.17″ W.

(3) *Restricted area no. 3.* Restricted area no. 3 is the water area of the Lakeside Yacht Club entrance channel which is outside restricted area no. 1, and southwest of a line running 328° T from point A at 41°31′33.45″ N., 81°39′47.45″ W.

(4) *Restricted area no. 4.* Restricted area no. 4 is the area inside the Lakeside Yacht Club docks which is southwest of a line running 328° T from the intersection of 81°39′58.47″ W and a reference line running between point A at 41°31′33.45″ N, 81°39′47.45″ W and point B at 41°31′19.67″ N, 81°40′19.17″ W, and northwest of the same reference line.

(5) *Restricted area no. 5.* Restricted area no. 5 is the area inside the Lakeside Yacht Club docks which is outside restricted area 4 and northwest of a line 183 feet southeast and parallel to a reference line running between point A at 41°31′33.45″ N, 81°39′47.45″ W and point B at 41°31′19.67″ N, 81°40′19.17″ W.

(6) *Restricted area no. 6.* Restricted area no. 6 is the area inside the Lakeside Yacht Club docks which is outside restricted areas 4 and 5.

(b) *Restrictions applicable to vessels of certain heights.* Vessels with masts of certain heights are subject to the following restrictions with reference to the restricted areas detailed in paragraph (a) of this section. The height of a vessel is the height above the water line of masts, antennas, navigational equipment, or any other structure.

(1) *Less than 41 feet.* Vessels less than 41 feet in height are not subject to any restrictions under this section.

(2) *41 to 45 feet.* Vessels at least 41 feet in height yet less than 45 feet in height may not enter restricted area 1.

(3) *45 to 53 feet.* Vessels at least 45 feet in height yet less than 53 feet in height may not enter restricted area 1 and must comply with the clearance procedures prescribed in paragraph (c) when navigating through restricted area 2.

(4) *53 to 63 feet.* Vessels at least 53 feet in height yet less than 63 feet in height may not enter restricted area 1, must comply with the clearance procedures prescribed in paragraph (c) of this section when navigating through restricted area 2, and may not dock in or enter restricted area 4 at any time.

(5) *63 to 95 feet.* Vessels at least 63 feet in height yet less than 95 feet in height may not enter restricted area 1, must comply with the clearance procedures prescribed in paragraph (c) of this section when navigating through restricted areas 2 or 3, and may not dock in or enter restricted areas 4 or 5 at any time.

(6) *95 feet or more.* Vessel 95 feet or more in height may not enter any restricted area, 1 through 6, at any time.

(c) *Clearance procedures.* Except during the times specified in paragraph (d), operators of vessels subject to these procedures must do the following:

(1) Obtain clearance from the Burke Lakefront Air Traffic Control Tower before navigating through the restricted area(s);

(2) Navigate promptly through the area(s) at a safe and practical speed. Navigation at a safe and practical speed includes brief stops at the fueling dock inside restricted area 3 by vessels with masts between 63 and 95 feet in height; and

(3) Promptly inform the Burke Lakefront Air Traffic Control Tower after clearing the restricted area(s), or of any difficulty preventing prompt clearance. The Burke Lakefront Air Traffic Control Tower may be contacted on marine radio channel 14, or by telephone at (216) 781–6411 except as noted during the suspended hours listed in paragraph (d) of this section. The radio and telephone will be manned when the instrument guided approach system is being utilized.

(4) Clearance may also be obtained for longer periods or for groups of vessels when arranged in advance with Burke Lakefront Airport by any appropriate means of communication, including a prior written agreement.

(d) *Enforcement of clearance requirements.* The clearance procedures specified in paragraph (c) of this section will not be enforced during the following times:

(1) 11:00 p.m. on Fridays to 7:00 a.m. on Saturdays.

(2) 11:00 p.m. on Saturdays to 8:00 a.m. on Sundays.

(3) 12:00 midnight Sunday nights to 7:00 a.m. on Mondays.

(e) *Enforcement.* This section will not be enforced during any period in which the Federal Aviation Administration withdraws approval for operation of an instrument-only approach to runway 24 on the northeast end of Burke Lakefront Airport.

Dated: January 29, 1999.

**J.F. McGowan,**

*Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 99–3940 Filed 2–17–99; 8:45 am]

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## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

**[Docket No. 98–25]**

### Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is revising and redesignating its regulations relating to section 19 of the Merchant Marine Act, 1920, section 13(b)(5) of the Shipping Act of 1984, and the Foreign Shipping Practices Act of 1988, and adding new regulations relating to section 9 of the Shipping Act of 1984, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

**DATES:** This rule is effective May 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street N.W., Washington, D.C. 20573–0001, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** On December 4, 1998, the Federal Maritime Commission (''Commission'') published a proposed rule to revise its regulations on restrictive foreign shipping practices and controlled carriers. 63 FR 67030. The proposed rule implemented changes made by the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902 (''OSRA''), and also clarified existing regulations. Interested parties were given the opportunity to submit comments on the proposed rule. The Commission received four comments from industry groups and regulated entities.

The first comment received by the Commission is from the Council of European and Japanese National Shipowners' Associations (''CENSA''), which has three specific comments to the proposed rule. CENSA first addresses §§ 550.102 and 550.301, which explicate the regulatory action that may be taken by the Commission in the event it finds foreign shipping practices to create conditions unfavorable to shipping. The proposed regulations indicate that the Commission may take action when it finds that ''competitive methods, pricing practices or other practices'' have created conditions unfavorable to shipping. This language tracks verbatim OSRA's changes to section 19(a)(2) (formerly section 19(1)(b)) of the Merchant Marine Act, 1920. CENSA fears that this provision expands the Commission's power over privately-operated shipping companies with respect to their commercial pricing practices. CENSA states that Organisation for Economic Cooperation and Development (''OECD'') member nations have agreed to reach a uniform consensus as to the appropriate measures to be taken to address unfair or non-commercial practices. CENSA believes that such issues must be taken up in inter-governmental fora rather than by the Commission. CENSA requests that the Commission state that it will not pursue any matter under section 19 of the Merchant Marine Act, 1920 regarding the pricing practices of owners or operators of vessels of a foreign country unless those practices have been shown to be otherwise in violation of the Shipping Act of 1984 (''1984 Act'').

CENSA's comment would have the Commission affirmatively abdicate its statutory responsibility to combat conditions unfavorable to shipping vested in it by Congress for the purpose of permitting other bodies, like the OECD, to establish uniform rules. By including in OSRA references to ''pricing practices,'' Congress has bestowed upon the Commission the specific responsibility to review and retaliate against such practices where they create conditions unfavorable to shipping in the U.S. foreign trade. The Commission cannot disregard this duty; should Congress determine through legislation to defer to the OECD or some other such forum, then the Commission would change its approach accordingly. We note, moreover, that the addition of ''pricing practices'' to the statute is a clarification of existing law and authority, rather than an expansion of such. The Commission has long interpreted ''pricing practices'' to be included within the meaning of ''practices'' generally, and has on numerous occasions acted accordingly. The Commission has therefore determined not to incorporate CENSA's comment into the final rule.

CENSA then addresses § 560.2(c), in which the Commission proposed to eliminate the term ''fighting ships'' from its regulation, and substitute in its place language forbidding ''below market pricing designed to exclude competition.'' CENSA states that the Commission's determination to eliminate the term ''fighting ships'' must be taken in concert with what CENSA views as the survival of the fighting ship concept, though not the term, in OSRA. CENSA argues that Congress did not intend to eliminate the concept of fighting ships, but instead meant to recognize current conditions in which predatory practices would often be undertaken by multiple ship combinations rather than by a single ''fighting ship.'' CENSA points to section 10(b)(6) of the 1984 Act as amended by OSRA as evidence of the survival of the fighting ship concept. That section indicates that ''(n)o common carrier, either alone or in conjunction with any other person, directly or indirectly, may use a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition, by driving another ocean common carrier out of that trade.'' Prior to the enactment of OSRA, the section (previously designated as section 10(b)(7)) indicated that ''(n)o common carrier, either alone or in conjunction with any other person, directly or indirectly, may employ a fighting ship.'' CENSA argues that the replacement of the term ''fighting ship'' reflects a refinement of the concept. CENSA fears that the proposed regulation proffered by the Commission is too vague and could lead to an overly broad interpretation to the detriment of competitive pricing mechanisms. For this reason, CENSA proposes that the Commission include the language from section 10(b)(6) in place of the term ''fighting ship'' in 46 CFR 560.2(c).

The deletion of the term ''fighting ship'' from § 560.2(c) was undertaken to reflect the deletion of that term from the 1984 Act. However, the definition of ''predatory practices'' in § 560.2(c), as CENSA has made clear, should continue to include the concept of a reduction in competition through the use of pricing mechanisms designed to push a common carrier out of a particular trade.

The section as proposed indicated that predatory practices may be but are not limited to below cost pricing and the use of closed conferences employing deferred rebates. Other actions or practices may very well fall into the definition of ''predatory practices,'' as the list is not exhaustive. However, CENSA's comment in this regard does serve to clarify and refine the concept the Commission attempted to propose in section 560.2(c); accordingly, the Commission has determined to amend § 560.2(c) to read as follows:

(c) Use of predatory practices, possibly including but not limited to the use of a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade, and closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

Finally, CENSA addresses § 560.7(b)(3)(i), in which the Commission proposed to include the suspension of service contracts as a possible remedy to address restrictive foreign shipping practices under section 13(b)(6) of the 1984 Act. CENSA argues that OSRA did not amend section 13(b)(6) of the 1984 Act to include the suspension of service contracts, although it did amend other sections of the Act to reflect this penalty.

CENSA is mistaken. The Foreign Shipping Practices Act of 1988 (''FSPA'') as amended by OSRA indicates that ''the actions against foreign carriers authorized in subsections (e) and (f) * * * may be used in the administration and enforcement of section 13(b)(6) of the Shipping Act of 1984.'' *See* subsection 11a(h). The actions in subsections (e) and (f) include, at subsection (e)(1)(B), ''suspension, in whole or in part, of any or all tariffs and service contracts.'' The suspension of service contracts is authorized by OSRA's modification to the FSPA, and is correctly included in § 560.7(b)(3)(i).

The second comment is from the National Industrial Transportation League (''NITL''), a shipper organization. The comment examines redesignated part 560, which implements section 13(b)(6) of the Shipping Act of 1984, as revised (and renumbered—it was formerly section 13(b)(5)) by OSRA. The comment specifically addresses § 560.2(c), in which the Commission proposed to amend its regulations relating to ''predatory practices'' by including in the description of such practices the definition ''possibly including but not limited to below market pricing designed to exclude competition.'' NITL states that this amendment is not necessitated by OSRA, is vague, and is not supported by well-developed law. NITL states that it is concerned that the precedent established by this proposed rule, if implemented, could be used in other contexts, like claims under section 10 of the 1984 Act, and that such usage would be inappropriate.

NITL argues that case law indicates that the term ''predatory practices'' is taken to mean pricing activity below *costs,* not below market pricing, citing inter alia *Brooke Group, Ltd.* v. *Brown and Williamson Tobacco Corp.,* 509 U.S. 209 (1993). NITL concludes that the reference to ''below market pricing designed to exclude competition'' should be eliminated.

As explained above, in response to CENSA's comment, § 560.2(c) has been amended to remove the reference to ''below market pricing.'' For this reason, NITL's concerns with the use of the ''below market'' language appear to have been mooted. Accordingly, no further change in the amended rule is necessitated.

The third comment received by the Commission is from the China Ocean Shipping Company (''COSCO''). COSCO notes that OSRA has eliminated several exceptions to the Commission's controlled carrier program, which elimination will have the effect of imposing on COSCO controlled carrier regulations in the trade between the U.S. and China from which it was previously exempt. COSCO further states that it should not be considered a controlled carrier, as it allegedly does not receive any allocations or subsidies from the Chinese government.

COSCO's comments are in the nature of a policy-based objection to the scope of the controlled carrier provisions, and Congress's deletion of certain exceptions. Therefore, no changes to the rule are warranted by COSCO's comments.

The final comment received by the Commission is from Fruit Shippers Ltd. This comment, captioned as a response to Docket No. 98–25, in fact addresses issues as to the definition of ''common carrier'' in §§ 514.2 and 572.104(f), which were raised in Docket No. 98–29, 63 FR 70368. Because the comment relates only to those sections, and does not address any of the issues in this docket, the Commission will consider the comment in the context of that proceeding.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the proposed changes affect vessel-operating common carriers, entities that are not considered to be small. The comments received did not dispute the Commission's intention to certify; therefore, the certification is continued.

This regulatory action is not a ''major'' rule under 5 U.S.C. 804(2).

**List of Subjects**

*46 CFR Parts 550 and 585*

Administrative practice and procedure, Maritime carriers.

*46 CFR Part 551 and 586*

Japan, Maritime carriers.

*46 CFR Parts 560 and 587*

Administrative practice and procedure, Maritime carriers.

*46 CFR Parts 555 and 588*

Administrative practice and procedure, Investigations, Maritime carriers.

*46 CFR Part 565*

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission amends 46 CFR parts 550, 551, 555, 560, 585, 586, 587, and 588, and adds new part 565, as set forth below:

1. Revise the heading of subchapter C to read:

**SUBCHAPTER C—REGULATIONS AND ACTIONS TO ADDRESS RESTRICTIVE FOREIGN MARITIME PRACTICES**

## PART 585—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES [REDESIGNATED AS PART 550]

1. Redesignate part 585 as part 550, and transfer newly designated part 550 to subchapter C.

2. The authority citation for redesignated part 550 is revised to read as set forth below:

**Authority:** 5 U.S.C. 553; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l), as amended by Pub. L. 105–258; Reorganization Plan No. 7 of 1961, 75 Stat 840; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a.

2A. Add a note to newly designated Part 550 to read as follows:

**Note to Part 550:** In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in this part 550 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 550.102 to read as follows:

**§ 550.102 Scope.**

Regulatory actions may be taken when the Commission finds, on its own motion or upon petition, that a foreign government has promulgated and enforced or intends to enforce laws, decrees, regulations or the like, or has engaged in or intends to engage in practices which presently have or prospectively could create conditions unfavorable to shipping in the foreign trade of the United States, or when owners, operators, agents or masters of foreign vessels engage in or intend to engage in competitive methods, pricing practices or other practices which have created or could create such conditions.

4. Revise redesignated § 550.103(a) and (b) to read as follows:

**§ 550.103 Definitions.**

* * * * *

(a) *Act* means the Merchant Marine Act, 1920, as amended by Pub. L. 101–595 and as amended by Pub. L. 105–258.

(b) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country, and includes any common carrier, tramp operator, bulk operator, shipper, shippers' association, importer, exporter, consignee, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States.

* * * * *

5. Revise redesignated § 550.201(a) to read as follows:

**§ 550.201 Information orders.**

* * * * *

(a) The Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any officer, receiver, trustee, lessee, agent, or employee thereof), to file with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

* * * * *

6. Revise redesignated § 550.202(b) introductory text, and (b)(3) to read as follows:

**§ 550.202 Type of information**

* * * * *

(b) Shipper, shippers' association, or ocean transportation intermediary in the affected trade to furnish any or all of the following information:

* * * * *

(3) Amount of brokerage, ocean transportation intermediary compensation or other charges collected or paid in connection with shipments in the affected trade; and

* * * * *

7. Revise the introductory text and paragraph (d) of redesignated § 550.301 to read as follows:

**§ 550.301 Findings.**

For the purposes of this part, conditions created by foreign governmental action or competitive methods, pricing practices or other practices of owners, operators, agents or masters of foreign vessels are found unfavorable to shipping in the foreign trade of the United States, if such conditions:

* * * * *

(d) Restrict or burden a carrier's intermodal movements or shore-based maritime activities, including terminal operations and cargo solicitation; agency services; ocean transportation intermediary services and operations; or other activities and services integral to transportation systems; or

* * * * *

8. Revise redesignated § 550.601(c) to read as follows:

**§ 550.601 Actions to correct unfavorable conditions.**

* * * * *

(c) Suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

* * * * *

9. Revise redesignated § 550.602 to read as follows:

**§ 550.602 Penalty.**

A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under § 550.505 or § 550.601 of this part, or after its right to use another tariff or service contract has been suspended under those sections, is subject to a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.

## PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE [REDESIGNATED AS PART 551]

1. Redesignate part 586 as part 551, and transfer newly designated part 551 to subchapter C.

2. The authority citation for redesignated part 551 is revised to read as follows:

**Authority:** 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 CFR part 550; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2A. Add a note to newly designated Part 551 to read as follows:

**Note to Part 551:** In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in this part 551 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

**§ 551.3 [Removed]**

3. Redesignated § 551.3 is removed.

## PART 587—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS [REDESIGNATED AS PART 560]

1. Redesignate part 587 as part 560, and transfer newly designated part 560 to subchapter C.

2. The authority citation for redesignated part 560 is revised to read as follows:

**Authority:** 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(6), 1714, and 1716, as amended by Pub. L. 105–258; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

3. Revise redesignated § 560.1(a) to read as follows:

**§ 560.1 Purpose; general provisions.**

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel

documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter ''U.S. flag vessel'') to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel (hereinafter ''U.S. flag carrier'') may petition the Federal Maritime Commission for relief under the authority of section 13(b)(6)of the Shipping Act of 1984 (''the Act'') (46 U.S.C. app. 1712(b)(6)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(6)may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

* * * * *

4. Revise redesignated § 560.2(c) to read as follows:

**§ 560.2 Factors indicating conditions unduly impairing access.**

* * * * *

(c) Use of predatory practices, possibly including but not limited to the use of a vessel or vessels in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade, and closed conferences employing deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

* * * * *

5. Revise the first sentence of the introductory text of redesignated § 560.5(a) to read as follows:

**§ 560.5 Receipt of relevant information.**

(a) In making its decision on matters arising under section 13(b)(6)of the Act, the Commission may receive and consider relevant information from any owner, operator, or conference in an affected trade, or from any foreign government, either directly or through the Department of State or from any other reliable source. * * *

6. Revise redesignated § 560.7(b)(3)(i) to read as follows:

**§ 560.7 Decision; sanctions; effective date.**

* * * * *

(b) * * *

(3)(i) Suspension, in whole or in part, of any or all tariffs or service contracts for carriage to or from United States ports for any period the Commission specifies, or until such time as unimpaired access is secured for U.S. flag carriers in the affected trade.

* * * * *

## PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S. FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES [REDESIGNATED AS PART 555]

1. Redesignate part 588 as part 555, and transfer newly designated part 555 to subchapter C.

2. The authority citation for redesignated part 555 is revised to read as follows:

**Authority:** 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a), as amended by Pub. L. 105–258.

2A. Add a note to newly designated part 555 to read as follows:

**Note to Part 555**: In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (e.g., an entire industry), any information requests or requirements in this part 555 are not subject to the requirements of section 3507 of the Paperwork Reduction Act because such collections of information are pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

3. Revise redesignated § 555.1 to read as follows:

**§ 555.1 Purpose.**

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, as amended by the Ocean Shipping Reform Act of 1998, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

4. Revise redesignated § 555.2(a), (c), and (d) to read as follows:

**§ 555.2 Definitions.**

* * * * *

(a) *Common carrier, marine terminal operator, ocean transportation intermediary, ocean common carrier, person, shipper, shippers' association,* and *United States* have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

* * * * *

(c) *Maritime services* means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(d) *Maritime-related services* means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

* * * * *

5. Revise redesignated § 555.4(a) and (c) to read as follows:

**§ 555.4 Petitions.**

(a) A petition for investigation to determine the existence of adverse conditions as described in § 555.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

* * * * *

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to the filing of an amended petition.

6. Revise redesignated § 555.8 (a)(2) to read as follows:

**§ 555.8 Action against foreign carriers.**

(a) * * *

(2) Suspension, in whole or in part, of any or all tariffs or service contracts, including the right of an ocean common carrier to use any or all tariffs or service contracts of conferences in United States trades of which it is a member for such period as the Commission specifies;

* * * * *

1. Add part 565 to subchapter C to read as follows:

## PART 565—CONTROLLED CARRIERS

Sec.

**Authority:** 46 U.S.C. App. 1708, as amended by Pub. L. 105–258.

### § 565.1 Purpose and Scope.

(a) *Purpose.* The regulations of this part are intended to carry out the Commission's mandate under section 9 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998, to monitor the practices of controlled carriers and ensure that they do not:

(1) Maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor

(2) Establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(b) *Scope.* The regulations contained in this part set forth the special procedures whereby controlled carriers' tariffs and service contracts become effective and are reviewed by the Commission. These regulations in no way exempt controlled carriers from other Commission regulations or statutory authority to which they may otherwise be subject as ocean common carriers. These regulations apply to all controlled carriers operating in the foreign commerce of the United States unless excepted under section 9(f) of the Shipping Act of 1984, as reflected by § 565.5.

### § 565.2 Definitions.

(a) *Controlled carrier* means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government. Ownership or control by a government shall be deemed to exist with respect to any ocean common carrier if:

(1) A majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the carrier.

(b) *Effective date* has the same meaning it has in 46 CFR part 520.

### § 565.3 Classification as controlled carrier.

(a) *Notification.* The Commission will periodically review the ocean common carriers operating in the foreign commerce of the United States and will notify any ocean common carrier of any change in its classification as a controlled carrier.

(b) *Rebuttal of classification.* (1) Any ocean common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(2) The Commission shall review the rebuttal and notify the ocean common carrier of its final decision.

### § 565.4 Notification to Commission of change in control.

Whenever the operation, control or ownership of an ocean common carrier is transferred resulting in a majority portion of the interest of that ocean common carrier being owned or controlled in any manner by a government, the ocean common carrier shall immediately send written notification of the details of the change to the Secretary of the Commission. If a carrier is newly commencing ocean common carrier operations in a United States trade, and if a majority portion of the carrier is owned or controlled by a government, or if a government may approve or disapprove the majority of directors or the chief executive or operating officer of the carrier, the carrier shall immediately send written notification to the Secretary of the details of such ownership or control.

### § 565.5 Exceptions.

All controlled carriers shall be subject to provisions of this part and section 9 of the Shipping Act of 1984 except those which meet the following exceptions:

(a) When the vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

(b) When the controlled carrier operates in a trade served exclusively by controlled carriers.

### § 565.6 Level of rates and charges generally.

No controlled carrier may maintain or enforce rates or charges in its tariffs or service contracts that are below a level that is just and reasonable. No controlled carrier may establish or maintain unjust or unreasonable classifications, rules, or regulations in its tariffs or service contracts. An unjust or unreasonable classification, rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. *See* § 565.9(a)(2) (Rate standards).

### § 565.7 Effective dates.

(a) *Generally.* Except for service contracts, the rates, charges, classifications, rules or regulations of controlled carriers may not, unless the Commission has granted special permission, become effective sooner than the 30th day after the date of publication.

(b) *Open rates*—(1) *Generally.* Controlled carriers that are members of conference agreements publishing rates for commodities designated as open by the conference are subject to the 30-day controlled carrier notice requirement, except when special permission is granted by the Commission under § 565.8.

(2) *Conference publication of reduced open rates.* Notwithstanding paragraph (b)(1) of this section, a conference may, on less than 30 days' notice, publish reduced rates on behalf of controlled carrier members for open-rated commodities:

(i) At or above the minimum level set by the conference; or

(ii) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

(c) *Independent action rates of controlled carriers.* Conferences may publish on behalf of their controlled carrier members lower independent action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being published at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled carrier subject to section 9 of the Shipping Act of 1984.

### § 565.8 Special permission.

Section 8(d) of the Shipping Act of 1984 authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 565.7. Section 9(c) of the Shipping Act of 1984 authorizes the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its

discretion and for good cause shown, permit departures from the requirements of this part. The Commission will consider such requests for special permission by controlled carriers pursuant to its procedures set forth at 46 CFR part 520.

**§ 565.9 Commission review, suspension and prohibition of rates, charges, classifications, rules or regulations.**

(a) (1) *Request for justification*. Within 20 days of a request (with respect to its existing or proposed rates, charges, classifications, rules or regulations) from the Commission, each controlled carrier shall file a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(2) *Rate standards*. (i) In determining whether rates, charges, classifications, rules or regulations by a controlled carrier are just and reasonable, the Commission shall take into account whether the rates or charges which have been published or assessed or which would result from the pertinent rates, charges, classifications, rules or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual or constructive costs.

(ii) For the purposes of paragraph (a)(2)(i) of this section, *constructive costs* means the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade.

(iii) The Commission may also take into account other appropriate factors, including, but not limited to, whether:

(A) The rates, charges, classifications, rules or regulations are the same as or similar to those published or assessed by other carriers in the same trade;

(B) The rates, charges, classifications, rules or regulations are required to assure movement of particular cargo in the trade; or

(C) The rates, charges, classifications, rules or regulations are required to maintain acceptable continuity, level or quality of common carrier service to or from affected ports.

(3) *Time for determination*. The Commission shall determine within 120 days of the receipt of information requested by the Commission under this section, whether the rates, charges, classifications, rules or regulations of a controlled carrier may be unjust and unreasonable. Whenever the Commission is of the opinion that the rates, charges, classifications, rules or regulations published or assessed by a controlled carrier may be unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules or regulations should not be prohibited.

(b) *Suspension*. Pending a decision on whether to prohibit the rates, charges, classifications, rules or regulations of a controlled carrier, the Commission may suspend the rates, charges, classifications, rules or regulations. *See* § 565.10.

(c) *Prohibition*. The Commission shall prohibit the use of any rates, charges, classifications, rules or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled carrier to demonstrate that its rates, charges, classifications, rules or regulations are just and reasonable. The use of rates, charges, classifications, rules or regulations published or assessed by a controlled carrier that have been suspended or prohibited by the Commission is unlawful.

(d) *Publication*. All final orders of prohibition shall be published in the **Federal Register**.

**§ 565.10 Suspension procedures period and replacement rates.**

(a)(1) *Suspension prior to effective date*. Pending a determination as to their lawfulness in a prohibition proceeding as described in § 565.9, the Commission may suspend the rates, charges, classifications, rules or regulations at any time before their effective date.

(2) *Suspension after effective date.* In the case of rates, charges, classifications, rules or regulations that have already become effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules or regulations on not less than 30 days' notice to the controlled carrier.

(b) *Period of suspension*. In any case, no period of suspension may be greater than 180 days.

(c) *Implementation*. (1) Upon issuance of an order suspending a rate, charge, classification, rule or regulation in whole or in part, the Commission shall direct the controlled carrier to remove the suspended material from its tariff publication; or

(2) if the matter subject to the suspension order is not covered by paragraph (c)(1) of this section, the Commission shall set forth procedures in the order for implementing the suspension.

(3) *Publication.* All orders of suspension shall be published in the **Federal Register**.

(d) *Replacement rates.* Controlled carriers may publish in tariffs or file in service contracts rates, charges, classifications, rules or regulations in lieu of the suspended matter (''replacement rates'').

(1) *Effective date*. In the case of replacement rates which are published in tariffs and which are scheduled to become effective during a suspension period, may become effective immediately upon either their publication in tariffs or upon the effective date of the suspension, whichever is later.

(2) *Rejection of replacement rates*. The Commission may reject the replacement rates, charges, classifications, rules or regulations published in tariffs or filed in service contracts to take effect during the suspension period if they are unjust and unreasonable. In determining whether to reject replacement rates, charges, classifications, rules or regulations, the Commission will consider whether they would result in total charges (i.e, rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a common carrier, other than a controlled carrier, serving the same trade.

(3) At the same time it announces replacement rates, the controlled carrier shall submit to the Secretary of the Commission, a letter identifying the specific competing common carrier's rates, charges, classification or rules resulting in total charges which are equal to or lower than its own.

**§ 565.11 Presidential review.**

The Commission shall transmit all orders of suspension or final orders of prohibition to the President of the United States concurrently with the submission of such orders to the **Federal Register** pursuant to § 565.9(d) or § 565.10(c)(3). The President may, within 10 days of either the receipt or effective date of the order, request in writing that the Commission stay the effect of the order for reasons of national defense or foreign policy.

**§ 565.12 Stay, postponement, discontinuance or suspension of action.**

The Commission may, on its own motion or upon petition, postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part. The Commission shall immediately stay the effect of any order issued under this part as requested by the President pursuant to § 565.11.

**§ 565.13 OMB control number assigned pursuant to the Paperwork Reduction Act**

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0060.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 99–3757 Filed 2–17–99; 8:45 am]

BILLING CODE 6730–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 981222313–8320–02; I.D. 021299A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Trawling in Steller Sea Lion Critical Habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting trawling within Steller sea lion critical habitat in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1999 critical habitat percentage of the interim harvest specifications of Atka mackerel allocated to the Central Aleutian District has been reached.

**DATES:** Effeqctive 1200 hrs, Alaska local time (A.l.t.), February 13, 1999, until the directed fishery for Atka mackerel closes within the Central Aleutian District.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 interim TAC for Atka mackerel in the Central Aleutian District is 9,520 metric tons (mt), of which no more than 7,616 mt may be harvested from critical habitat (64 FR 3446, January 22, 1999). See § 679.20(c)(2)(ii)(A) and 679.22(a)(8)(iii)(B).

In accordance with § 679.22(a)(8)(iii)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowable harvest of Atka mackerel in Steller sea lion critical habitat in the Central Aleutian District as specified under the 1999 interim harvest specifications has been reached. Consequently, NMFS is prohibiting trawling in critical habitat, as defined at 50 CFR part 226, Table 1, Table 2, and Figure 4, in the Central Aleutian District of the BSAI.

### Classification

This action responds to the interim TAC limitations and final rule implementing season and area apportionment of Atka mackerel total allowable catch for the BSAI. It must be implemented immediately to avoid jeopardy to the continued existence of Steller sea lions. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 12, 1999.

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–3978 Filed 2–12–99; 2:34 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 64, No. 32
Thursday, February 18, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Chapters I, IX, X and XI

**[Doc. # L&RR–99–01]**

### Regulatory Flexibility Act; Plan for Periodic Review of Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Schedule for review of agency regulations.

**SUMMARY:** The Agricultural Marketing Service (AMS) is publishing its plan for the review of its regulations under the criteria contained in Sec. 610 of the Regulatory Flexibility Act (RFA). AMS has included in this plan all regulations that warrant periodic review irrespective of whether specific regulations meet the threshold requirement for mandatory review established by the RFA. The identified rules will be reviewed as indicated during the next ten years.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Hogan, Director, Legislative and Regulatory Review Staff, AMS, USDA, P.O. Box 96456, Room 3510-South, Washington, D.C. 20090–6456; telephone: (202) 720–3203; fax: (202) 690–3767.

**SUPPLEMENTARY INFORMATION:**

### Background

Sec. 610 of the RFA (5 U.S.C. 610) requires agencies to review all regulations on a periodic basis that have or will have a significant economic impact on a substantial number of small entities. Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which although they may not meet the threshold requirement under Sec. 610 of the RFA (5 U.S.C. 610) merit review. Accordingly, AMS has prepared this ten-year plan for reviewing the listed rules. The purpose of each review will be to determine whether the rules should be continued without change, or should be amended or rescinded (consistent with the objectives of applicable statutes) to minimize impacts on small entities.

In reviewing its rules the AMS will consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments from the public concerning the rule;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with state and local regulations; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

A list of the regulations will be included, in the year the regulations are scheduled for review, in AMS' regulatory agenda which is printed in the **Federal Register** as part of the Unified Agenda in April and October. At that time a contact will be identified to whom comments may be submitted for each rule scheduled for review.

AGRICULTURAL MARKETING SERVICE 10-YEAR REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW—REGULATORY FLEXIBILITY ACT

| CFR part & authority | AMS program/regulation | Year implemented | Year for review |
|---|---|---|---|
| 7 Part 46; Sec. 15, 46 Stat. 537; 7 U.S.C. 499o | Perishable Agricultural Commodities Act, 1930 | 1930/Regs Amended 1997 | 2008 |
| 7 Part 110; 7 U.S.C. 136a(d)(1)(c), 1361–1, and 450; 7 CFR 2.17, 2.50. | Pesticide Recordkeeping | 1993 | 2003 |
| 7 Part 201; 7 U.S.C. 1592 | Federal Seed Act | 1939 | 2000 |
| 7 Part 205; 7 U.S.C. 6501–6522 | National Organic Program | 2000 | 2010 |
| 7 Part 905; 7 U.S.C. 601–674 | Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida. | 1939 | 2007 |
| 7 Part 916; 7 U.S.C. 601–674 | Nectarines Grown in California | 1958 | 2003 |
| 7 Part 917; 7 U.S.C. 601–674 | Fresh Pears and Peaches Grown in California | 1939 | 2003 |
| 7 Part 923; 7 U.S.C. 601–674 | Sweet Cherries Grown in Designated Counties in Washington. | 1957 | 2007 |
| 7 Part 925; 7 U.S.C. 601–764 | Grapes Grown in a Designated Area of Southeastern California. | 1980 | 2006 |
| 7 Part 927; 7 U.S.C. 601–674 | Winter Pears Grown in Oregon and Washington | 1939 | 2003 |
| 7 Part 929; 7 U.S.C. 601–674 | Cranberries Grown in States of Massachusetts, Rhode Island, etc. | 1962 | 2003 |
| 7 Part 930; 7 U.S.C. 601–764 | Tart Cherries Grown in Mass., RI, etc. | 1996 | 2006 |
| 7 Part 932; 7 U.S.C. 601–674 | Olives Grown in California | 1965 | 1999 |
| 7 Part 945; 7 U.S.C. 601–674 | Irish Potatoes Grown in Certain Designated Counties in ID, and Malheur County, OR. | 1941 | 2001 |
| 7 Part 948; 7 U.S.C. 601–674 | Irish Potatoes Grown in Colorado | 1941 | 2006 |
| 7 Part 966; 7 U.S.C. 601–674 | Tomatoes Grown in Florida | 1955 | 2002 |
| 7 Part 981; 7 U.S.C. 601–674 | Almonds Grown in California | 1950 | 2001 |
| 7 Part 984; 7 U.S.C. 601–674 | Walnuts Grown in California | 1948 | 2008 |
| 7 Part 989; 7 U.S.C. 601–674 | Raisins Produced from Grapes Grown in California | 1949 | 2004 |

AGRICULTURAL MARKETING SERVICE 10-YEAR REVIEW PLAN FOR REGULATIONS IDENTIFIED FOR SECTION 610 REVIEW—REGULATORY FLEXIBILITY ACT—Continued

| CFR part & authority | AMS program/regulation | Year implemented | Year for review |
|---|---|---|---|
| 7 Part 993; 7 U.S.C. 601–674 | Dried Prunes Produced in California | 1949 | 2002 |
| 7 Part 998; Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. | Marketing Agreement Regulating the Quality of Domestically Produced Peanuts. | 1965 | 2005 |
| 7 Parts 1000–1139; Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. | Federal Milk Marketing Orders | 1999 | 2009 |
| 7 Part 1150; 7 U.S.C. 4501–4513 | Dairy Promotion Program | 1984 | 2001 |
| 7 Part 1160; 7 U.S.C. 6401–6417 | Fluid Milk Promotion Program | 1993 | 2003 |
| 7 Part 1205; 7 U.S.C. 2101–2118 | Cotton Research and Promotion | 1996 | 2002 |
| 7 Part 1207; 7 U.S.C. 2611–2627 | Potato Research and Promotion | 1972 | 2001 |
| 7 Part 1209; 7 U.S.C. 6101–6112 | Mushroom Promotion, Research, and Consumer Information Order. | 1993 | 2004 |
| 7 Part 1210; 7 U.S.C. 4901–4916 | Watermelon Research and Promotion Plan | 1990 | 1999 |
| 7 Part 1215; 7 U.S.C. 7481–7491 | Popcorn Promotion, Research, and Consumer Information. | 1997 | 2007 |
| 7 Part 1220; 7 U.S.C. 6301–6311 | Soybean Promotion, Research, and Consumer Information. | 1991 | 2003 |
| 7 Part 1230; 7 U.S.C. 4801–4819 | Pork Promotion, Research, and Consumer Information | 1986 | 2001 |
| 7 Part 1240; 7 U.S.C. 4601–4612 | Honey Research, Promotion, and Consumer Information Order. | 1987 | 2002 |
| 7 Part 1250; 7 U.S.C. 2701–2718 | Egg Research and Promotion | 1976 | 2001 |
| 7 Part 1260; 7 U.S.C. 2901–2911 | Beef Promotion and Research | 1986 | 2003 |

Dated: February 11, 1999.

**Enrique E. Figueroa,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 99–3959 Filed 2–17–99; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

### Common Crop Insurance Regulations; Onion Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Onion Crop Insurance Provisions to: Modify stage guarantee percentages, to have a separate guarantee for transplanted and direct seeded onions, and to provide for modification of stage guarantee percentages in the Special Provisions; allow optional units by section or section equivalent or FSA farm serial number, unless otherwise provided in the Special Provisions; clarify the replant payment provisions; clarify the amount of production to count when damaged production is sold after a previous determination that the crop was 100 percent damaged; limit prevented planting coverage to 45 percent of the production guarantee for timely planted acreage; and change the termination date for one county in Oregon and one county in Washington. The intended effect of this action is to modify the existing policy so that it is actuarially sound and better meets the needs of insureds.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 5, 1999, and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before April 19, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Klein, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection or recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public comment concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, e.g. permitting electronic submission responses).

The collections of information for this rule revises the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expires April 30, 2001.

*Title:* Multiple Peril Crop Insurance.

*Abstract:* This rule improves the existing onion policy by; modifying stage guarantee percentages, providing a separate guarantee for transplanted and direct seeded onions, allowing modification of stage guarantee percentages in the Special Provisions, allowing optional units by section or section equivalent unless otherwise provided in the Special Provisions, clarifying the provisions on replant payments and the amount of production to count for damaged onion production that is sold after a previous determination that the crop was 100 percent damaged, limiting prevented planting coverage to 45 percent of the production guarantee for timely planted acreage, and changing the termination date for one county in Oregon and one county in Washington. The revisions are effective for the 2000 and succeeding crop years. It is anticipated that there will be more claims filed by insureds because of the revised unit division option.

*Purpose:* The purpose of this proposed rule is to modify the existing crop provisions for clarification, improve the method of calculating losses, provide additional coverage benefits for insureds, and make the policy more flexible through Special Provision statements, so that it better meets the needs of all regions of the country, and to provide an improved risk management tool for onion producers.

*Burden Statement:* The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee or amount of insurance, calculating losses qualifying for a payment, etc. FCIC assumes that by allowing optional units to be determined by section as well as irrigated and non-irrigated and type, the number of claims submitted by producers may increase the burden hours.

*Estimate of Burden:* We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .79 of an hour to provide the information required by the Onion Crop Insurance Provisions.

*Respondents:* Insureds, insurance agents, and loss adjusters.

*Estimated annual number of respondents:* 569.

*Estimated annual number of responses per respondent:* 2.4.

*Estimated annual number of responses:* 1,369.

*Estimated total annual burden on respondents:* The total public burden for this proposed rule is estimated at 448 hours.

*Recordkeeping requirements:* FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Executive Order 12612**

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, every insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.135 Onion Crop Insurance Provisions effective for the 2000 and succeeding crop years. The principal changes to the provisions for insuring onions are as follows:

1. *Section 1*—Revise the definition of ''production guarantee (per acre)'' to include a first stage guarantee for transplanted onions. The second stage for direct seeded storage onions is increased from 60 percent to 70 percent. These revised stage percentages reflect a more appropriate relationship of pre-harvest input costs to harvesting costs for both direct seeded and transplanted onions.

2. *Section 2*—Allow optional units by section, section equivalent, or FSA farm serial number, unless otherwise provided in the Special Provisions. This provides additional units for producers who generally raise only one type of onion (typically only yellows), irrigate all their acreage, and have onion acreage spread throughout large areas. Such

producers do not qualify for optional units under the existing policy, which only allows optional units by type and by irrigated or non-irrigated. Currently, type is defined in the Special Provisions by color, *i.e.*—red, yellow, or white.

3. *Section 3*—Add a separate first stage for transplanted onion plants or sets to run from transplanting through the 30th day after transplanting. Revise the first stage for direct seeded onions to continue until emergence of the fourth leaf instead of the third leaf. These time frames will allow sufficient time for the onions to become established before a higher guarantee applies. The language for the second stage for transplanted onions is revised to have a single standard for all onions. Based on this standard, the second stage for transplanted onions extends from the 31st day after transplanting until the acreage has been subjected to topping and lifting or digging. These changes were necessary because of the different risks at different times for direct seeded and transplanted onions.

4. *Section 5*—Change the termination date for one county in Oregon and one county in Washington to allow for a 60 day period between the billing and termination date. Currently these counties have only a 30 day period between billing and termination dates. This is too short a period of time.

5. *Section 11*—Add provisions to clarify that the amount of the replanting payment per acre will be the producer's actual cost of replanting not to exceed the lesser of 7 percent of the final stage production guarantee or 18 hundredweight multiplied by the producer's price election for the type originally planted and by the insured share. This consolidates all three criteria from the Basic Provisions and Crop Provisions needed to make a determination on the amount of a replanting payment in one section in the crop provisions. This will reduce confusion about the maximum amount of replanting payment.

6. *Section 13*—Add provisions to clarify that when damage to onion production exceeds the percentage shown in the Special Provisions but the production from that unit is sold, the quantity sold will be included as production to count on a pound-for-pound basis regardless of the quality.

7. *Section 14*—Removed the provision that allowed for additional prevented planting coverage levels. The provision had allowed producers who selected limited or additional levels of coverage, in accordance with the Special Provisions, and paid an additional premium, to obtain prevented planting coverage of 50 or 55 percent.

Prevented planting coverage is designed to reimburse producers for the costs incurred during the pre-plant period if the intended crop cannot be planted. This amount is intended to cover the total fixed cash expenses plus the variable cash costs normally associated with completing all field operations prior to planting onions. The prevented planting coverage level for onions is lower than other major crops because, although pre-planting costs per acre are comparable to other crops, such as corn, the average insurance guarantee per acre is much higher. Therefore, FCIC considers a prevented planting coverage level of 45 percent to be appropriate for onions and proposes that additional prevented planting coverage levels not be made available.

Premium rates for onions will continue to reflect Multiple Peril Crop Insurance experience for onions, and FCIC will consider any additional risk that may result from incorporation of changes to policy provisions contained in this proposed rule.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Onion.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend the onion crop insurance provisions contained in 7 CFR part 457 as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1998 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Section 457.135 is amended by revising the language in the onion crop insurance provisions as follows:

### § 457.135 Onion Crop Insurance Provisions [Amended]

a. Section 1 is amended to add definitions for ''direct seeded'' and ''transplanted'' and to revise the definition of ''production guarantee (per acre)'' as follows:

1. Definitions.

* * * * *

*Direct seeded*—Placing onion seed by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

*Production Guarantee (per acre):*

(a) First stage production guarantee—Thirty-five percent (35%) of the final stage production guarantee for direct seeded storage and non-storage onions and 45 percent of the final stage production guarantee for transplanted storage and non-storage onions, unless otherwise specified in the Special Provisions.

(b) Second stage production guarantee—Seventy percent (70%) of the final stage production guarantee for direct seeded storage onions and 60 percent of the final stage production guarantee for transplanted storage onions and all non-storage onions, unless otherwise specified in the Special Provisions.

* * * * *

*Transplanted*—Placing of the onion plant or bulb by machine or by hand at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

* * * * *

b. Section 2 is revised to read as follows:

2. Unit Division.

In addition to, or instead of, establishing optional units as provided in section 34 of the Basic Provisions, optional units may be established by type, if the type is designated in the Special Provisions.

* * * * *

c. Sections 3(b) (1) and (2) are revised to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) * * *

(1) First stage extends:

(i) For direct seeded storage and non-storage onions, from planting until the emergence of the fourth leaf; and

(ii) For transplanted storage and non-storage onions, from transplanting of onion plants or sets through the 30th day after transplanting.

(2) The second stage extends, for all onions, from the end of the first stage until the acreage has been subjected to topping and lifting or digging.

* * * * *

d. Section 5 is revised to read as follows:

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

| State and county | Cancellation date | Termination date |
|---|---|---|
| All Georgia Counties; Kinney, Uvalde, Medina, Bexar, Wilson, Karnes, Bee, and San Patrico Counties, Texas, and all Texas Counties lying south thereof. | August 31 ..... | August 31. |

| State and county | Cancellation date | Termination date |
|---|---|---|
| Umatilla County, Oregon; and Walla Walla County, Washington | August 31 | September 30. |
| All other states and counties | February 1 | February 1. |

* * * * *

e. Section 11(b) is revised to read as follows:

11. Replanting Payment.

* * * * *

(b) The maximum amount of the replanting payment per acre will be your actual cost for replanting, but will not exceed the lesser of:

(1) 7 percent of the final stage production guarantee multiplied by your price election for the type originally planted and by your insured share; or

(2) 18 hundredweight multiplied by your price election for the type originally planted and by your insured share.

* * * * *

f. Section 13(d) is revised to read as follows:

13. Settlement of Claim.

* * * * *

(d) If the damage to harvested or unharvested onion production exceeds the percentage shown in the Special Provisions for the type, no production will be counted for that unit or portion of a unit unless such damaged onion production from that acreage is sold. If sold, the damaged production will be counted on a pound-for-pound basis regardless of the quality.

* * * * *

g. Section 14 is revised to read as follows:

14. Prevented planting.

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. Additional prevented planting coverage levels are not available for onions.

Signed in Washington, D.C., on February 10, 1999.

**Robert Prchal,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 99–3890 Filed 2–17–99; 8:45 am]

**BILLING CODE 3410–08–P**

## FARM CREDIT ADMINISTRATION

## 12 CFR Part 615

**RIN 3052–AB80**

## Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency), is proposing to repeal a regulatory requirement that a Farm Credit Bank or an agricultural credit bank (collectively referred to as a bank) obtain FCA prior approval before giving financial assistance to an affiliated association. Instead, the proposed rule would require a bank to consider various standards before providing financial assistance and notify both the FCA and bank shareholders. We expect this rule change to reduce regulatory burden on banks.

**DATES:** Please send your comments to us on or before March 22, 1999.

**ADDRESSES:** You may mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of our website at ''www.fca.gov.'' You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883-4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** This action furthers our strategic plan commitment to consider eliminating regulatory prior approvals that are not required by the Farm Credit Act of 1971, as amended (Act), or are not based on safety and soundness concerns. The proposed regulation would eliminate the existing requirement in § 615.5171 that the FCA approve, in advance, any financial assistance from a bank to its affiliated associations. This change is appropriate for two reasons:

- The existing regulation's prior approval requirement runs counter to our current approach to supervising risk in Farm Credit System (System) institutions. Consistent with our role as arm's-length regulator, we have found that we can replace many prior approval requirements with simple notification requirements.
- Our new, much stronger, capital regulations will help to ensure that a bank will not imperil its own capital position in providing assistance to an association. *See* 62 FR 4449, January 30, 1997, for a more detailed discussion of our capital regulations.

### I. Scope and Application of § 615.5171

Section 1.5(11) of the Act provides that each Farm Credit Bank shall have the power, subject to our regulation, to ''purchase nonvoting stock in, or pay in surplus to * * * associations in its district.'' Section 615.5171 implements this provision of the Act as follows: ''Farm Credit Banks may purchase nonvoting stock and participation certificates of and pay in surplus to associations in their respective districts when authorized by the bank board of directors on a case basis and approved by the Farm Credit Administration.''

The regulation applies to any bank purchase of association nonvoting stock and participation certificates. The regulation does not discuss voting stock because banks are not eligible association borrowers/members and thus are not permitted to hold association voting stock. The regulation also refers to the bank's statutory authority to ''pay in surplus'' to associations. FCA's interpretations of the ''pay in surplus'' language have resulted in a broad application of the prior approval requirement for financial assistance transactions.

In general, it has been our practice to consider a bank to have triggered the prior approval requirement of this regulation when it purchases nonvoting stock or participation certificates or takes other action to pay in surplus to improve the capital position of an association. Thus, the FCA has required prior approval for the following types of transactions:

(1) Cash gifts;

(2) Debt forgiveness or compromise of indebtedness;

(3) Interest rate concessions;

(4) Interest free loans;

(5) Transfer of loans at less than fair market value;

(6) Reduction or elimination of standard loan service fees;

(7) Assumption of operating or other expenses (e.g., legal fees, insurance premiums, etc.); and

(8) Special compensation.

As currently interpreted, § 615.5171 also applies to transactions pursuant to loss-sharing agreements between banks and their affiliated associations. Under § 614.4340 of this chapter, any System institution may enter into an agreement to share loan and other losses with any other System institution. The agreements can involve the sharing of losses to protect against stock and participation certificate impairment, or for any other purpose. The agreements may address losses that arise in the future or that were recognized before the date of the agreement.

System institutions may execute loss-sharing agreements without FCA prior approval. In contrast, the FCA must approve in advance transactions pursuant to a loss-sharing agreement that result in a bank transferring capital or surplus to an association. Our proposed rule would eliminate Agency prior approval of such loss-sharing transactions, but would still require a bank to notify us before carrying out the transaction.

We have not interpreted the current regulation to cover routine business transactions and agreements between the banks and associations, such as a General Financing Agreement. Thus, § 615.5171 does not cover payment of dividends or patronage, normal adjustments to interest rates, bank equalization of purchased equity investments, and similar matters ordinarily addressed in an institution's bylaws. Our proposed rule would not change this approach.

## II. Approval of Financial Assistance Under § 615.5171

Generally, we have approved bank financial assistance to an association under the following circumstances:

(1) The bank would continue to be financially sound after providing assistance. The financial assistance would not place the bank's capital at risk prior to association capital.

(2) The financial assistance has a reasonable chance of returning the association to financial stability and self-sufficiency. Similarly, financial assistance provided to facilitate a merger of a troubled association would result in a reasonable chance for financial stability and continued service to borrowers.

(3) The proposed financial assistance is the ''least cost'' option available.

We have also ensured that other bank shareholders were informed of the financial assistance and that their interests were adequately considered by the bank board. In addition, in reviewing the purpose of proposed financial assistance requests, we have focused on ensuring that one association was not unduly advantaged compared to other affiliated associations. We have incorporated these general criteria for approval of financial assistance into the standards and notice sections of the proposed regulation.

## III. The Proposed Regulation

We propose that the prior approval requirement contained in § 615.5171 be removed and replaced with the following provisions:

(1) To clarify when the regulation is applicable, we have added a definition of financial assistance. This definition lists bank transactions with affiliated associations that we consider to be financial assistance. In general, financial assistance transactions are those in which a bank conveys a direct or indirect financial benefit to, or enters into contractual arrangements with, an affiliated association on a preferential basis not available on similar terms to all affiliated associations. On the other hand, we clarify that financial assistance does not include routine business transactions or transactions available on similar and nonpreferential terms to all affiliated associations.

(2) We have added a list of standards that a bank board must consider before authorizing financial assistance to an affiliated association. These standards are designed to ensure that financial assistance is in the best interests of the shareholders of the banks as well as the receiving association. Bank boards that give financial assistance must document their consideration of these standards.

(3) We have replaced the current prior approval requirement with a requirement for prior notification to FCA. This should provide greater flexibility to the banks and associations, while allowing us to identify and address safety and soundness concerns before a bank takes assistance action. During the 30-day notification period, we may need to request additional information. We also may exercise our enforcement authorities under title IV, part A, and title V, part C, of the Act.

(4) We have added a requirement for post notification to shareholders. This will ensure that all shareholders of the bank (associations and other financing institutions) are appropriately informed of the bank's assistance action. Banks may inform shareholders before assistance is given, and, in general, should inform shareholders as soon as practicable of any assistance actions.

The FCA will continue to coordinate with the Farm Credit System Insurance Corporation in financial assistance matters to ensure that all pertinent Insurance Fund issues are appropriately identified and addressed.

### List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

## PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

**Authority:** Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. The heading of subpart F is revised to read as follows:

### Subpart F—Property, Assistance, and Other Investments

3. Section 615.5171 is revised to read as follows:

#### § 615.5171 Financial assistance by Farm Credit Banks and agricultural credit banks to affiliated associations.

(a) *Financial assistance.* (1) Farm Credit Bank and agricultural credit bank (collectively, bank) financial assistance to affiliated associations includes, but is not limited to:

(i) Purchasing an affiliated association's nonvoting stock or participation certificates; and

(ii) Paying in surplus to an affiliated association in the form of:

(A) Cash;

(B) Debt forgiveness or compromise of indebtedness;

(C) Interest rate concessions;

(D) Interest free loans;

(E) Transfer of loans between the bank and the association at a value advantageous to the association relative to fair market value;

(F) Reduction or elimination of standard loan service fees;

(G) Assumption of operating or other expenses (e.g., legal fees, insurance premiums, etc.); and

(H) Any other preferential payment or compensation not available on similar terms to all affiliated associations.

(2) Financial assistance does not include routine business transactions providing financial benefits that are available on similar and nonpreferential terms to all affiliated associations.

(b) *Standards for financial assistance.* Before authorizing financial assistance to an affiliated association, a bank board of directors must consider and document whether:

(1) The financial assistance is necessary, feasible, and the ''least cost'' alternative available;

(2) The financial assistance is in the best interests of all of the shareholders;

(3) The bank will continue to be financially sound and maintain adequate capital after providing the financial assistance; and

(4) The financial assistance will enable the association to maintain service to borrowers.

(c) *Notification requirements.* (1) Banks must notify the Chief Examiner of the Farm Credit Administration at least 30 days prior to providing financial assistance to an affiliated association.

(2) Banks must notify their shareholders within a reasonable time of providing financial assistance to an affiliated association.

Date: February 12, 1995.

**Vivian L. Portis,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 99–3980 Filed 2–17–99; 8:45 am]

BILLING CODE 6705–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–CE–96–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed AD would require inspecting both (left and right wing configurations) environmental control system bleed tubes for damage, leakage, and a correct gap between the tube and wing lower panel crossing area, inspecting the wiring and surrounding structures for damage, and correcting any discrepancies found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent thermal expansion from causing leakage of an environmental control system bleed tube because of improper installation, which could result in deterioration of the electrical wiring and the surrounding structure.

**DATES:** Comments must be received on or before March 19, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. John R. Griffith, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6941; facsimile: (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–96–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–96–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on all I.A.M. Model Piaggio P–180 airplanes. The R.A.I. reports three instances where thermal expansion caused an environmental control system bleed tube to contact the wing skin where it crosses the lower wing panel.

The damage that results from the above-referenced condition, if not detected and corrected, could result in a bleed tube leaking with deterioration of the electrical wiring and the surrounding structure.

### Relevant Service Information

I.A.M. has issued Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998, which specifies procedures for:

—Inspecting both (left and right wing configurations) environmental control system bleed tubes for damage (dents), leakage, and a correct gap between the tube and wing lower panel crossing area;

—If any damaged environmental control system bleed tube is found damaged beyond certain limits or an incorrect gap between the tube and wing lower panel crossing area is found, replacing the bleed tube and rotating the bleed tube to match the necessary gap, as applicable;

—Inspecting the wiring and surrounding structures for damage if any leakage is found; and

—Repairing any damaged wiring or surrounding structures.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 98–329, dated September 18, 1998, in order to assure the continued airworthiness of these airplanes in Italy.

### The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of the Provisions of the Proposed AD**

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting both (left and right wing configurations) environmental control system bleed tubes for damage (dents), leakage, and a correct gap between the tube and wing lower panel crossing area. If any environmental control system bleed tube is found damaged beyond certain limits or an incorrect gap between the tube and wing lower panel crossing area is found, the proposed AD would require replacing the bleed tube and rotating the bleed tube to match the necessary gap, as applicable. The proposed AD would also require inspecting the wiring and surrounding structures for damage if any leakage is found, and repairing any damaged wiring or surrounding structures.

Accomplishment of the proposed actions would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

**Cost Impact**

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 5 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $1,500, or $300 per airplane. These figures only take into account the costs of the proposed inspection of the environmental control system bleed tubes and do not take into account the costs of any necessary follow-up action.

If any damage is found during the above-referenced inspection, the costs to accomplish any follow-up actions (tube replacement/gap adjustment/follow-up inspections) would take approximately 8 workhours per airplane to accomplish at an average labor rate of approximately $60 an hour. Parts cost approximately $500. Based on these figures, the total cost impact of any necessary follow-up actions is estimated at $980 per airplane.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**Industrie Aeronautiche E Meccaniche:** Docket No. 98–CE–96–AD.

*Applicability:* Model Piaggio P–180 airplanes, all serial numbers up to and including serial number 1031, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated in the body of this AD, unless already accomplished.

To prevent thermal expansion from causing leakage of the environmental control system bleed tube because of improper installation, which could result in deterioration of the electrical wiring and the surrounding structure, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect both (left and right wing configurations) environmental control system bleed tubes for damage (dents), leakage, and a correct gap between the tube and wing lower panel crossing area. Accomplish these actions in accordance with *Part A* of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

(b) If any environmental control system bleed tube is found damaged during the inspection required by paragraph (a) of this AD, prior to further flight, replace the damaged environmental control system bleed tube. Accomplish this action in accordance with *Part B* of Piaggio Service Bulletin (Mandatory) No.: SB–80-0072, Revision No. 1, dated September 9, 1998.

(c) If any leakage is found during the inspection required by paragraph (a) of this AD, prior to further flight, inspect the wiring and surrounding structures for damage, and repair any damaged wiring or surrounding structures. Accomplish the inspection in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998, and any repair in accordance with the applicable maintenance manual or other applicable FAA-approved document.

(d) If any incorrect gap between the tube and wing lower panel crossing area is found during the inspection required by paragraph (a) of this AD, prior to further flight, rotate the bleed tube to match the necessary gap. Accomplish this action in accordance with *Part B* of

Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Revision No. 1, dated September 9, 1998.

**Note 2:** *Part C* of Piaggio Service Bulletin (Mandatory) No.: SB–80–0072; Revision No. 1, dated September 9, 1998, includes procedures for accomplishing this AD for those airplanes where the Original Issue of the above-referenced service bulletin was already incorporated. For those owners/operators who have already accomplished the actions specified in Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Original Issue: June 5, 1998, only these procedures in *Part C* apply.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB–80–0072, Original Issue: June 5, 1998; Revision No. 1, dated September 9, 1998, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Note 4:** The subject of this AD is addressed in Italian AD 98–329, dated September 18, 1998.

Issued in Kansas City, Missouri, on February 9, 1999.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–3889 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–CE–04–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Fairchild Aircraft, Inc. SA226–T, SA226–T(B), SA226–AT, and SA226–TC Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Fairchild Aircraft, Inc. (Fairchild) Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC airplanes. The proposed AD would require replacing the existing brake master cylinders with brake master cylinders of improved design. The proposed AD is the result of an accident of a Model SA226–TC airplane where the master cylinder did not totally release the brake hydraulic pressure at the beginning of the takeoff roll. This caused the brakes to drag and the left-hand main wheel brakes to overheat, resulting in a wheel well area fire. The actions specified by the proposed AD are intended to prevent this situation from occurring on other airplanes, which could result in loss of control of the airplane and passenger injury during landing, takeoff, or taxi operations.

**DATES:** Comments must be received on or before April 12, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Werner Koch, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–04–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–04–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has received a report of an accident on a Fairchild Model SA226–TC airplane of Canadian registry. Analysis of the accident reveals that the master cylinder did not totally release the brake hydraulic pressure at the beginning of the takeoff roll. This caused the brakes to drag and the left-hand main wheel brakes to overheat, resulting in a wheel well area fire.

This condition, if not corrected on other airplanes of the same type design, could result in a wheel well area fire, loss of control of the airplane, and passenger injury during landing, takeoff, or taxi operations.

### Relevant Service Information

Fairchild has issued Service Bulletin 226–32–046, which incorporates the following pages:

| Pages | Revision level and date |
|---|---|
| 4, 5, 6, 8, 9, and 10. | Issued: November 29, 1983. |
| 1, 2, 3, and 7. | Revised: March 19, 1984. |

This service bulletin specifies procedures for replacing the existing brake master cylinders with brake master cylinders of improved design.

**The FAA's Determination**

After examining the circumstances and reviewing all available information related to the incidents described above, including the above-referenced service information, the FAA has determined that AD action should be taken to prevent the main wheel brakes from overheating because of the existing brake master cylinders not totally releasing the brake hydraulic pressure and causing the brakes to drag. This could result in loss of control of the airplane and passenger injury during landing, takeoff, or taxi operations.

**Explanation of the Provisions of the Proposed AD**

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require replacing the existing brake master cylinders with brake master cylinders of improved design. Accomplishment of the proposed replacement would be required in accordance with Fairchild Service Bulletin 226–32–046, which incorporates the following pages:

| Pages | Revision level and date |
|---|---|
| 4, 5, 6, 8, 9, and 10. | Issued: November 29, 1983. |
| 1, 2, 3, and 7. | Revised: March 19, 1984. |

**Cost Impact**

The FAA estimates that 200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $1,200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $432,000, or $2,160 per airplane.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

**Fairchild Aircraft, Inc.:** Docket No. 99–CE–04–AD.

*Applicability:* The following models and serial numbers, certificated in any category:

| Model | Serial numbers |
|---|---|
| SA226–T. | T201 through T275, T277 through T291. |
| SA226–T(B). | T(B)276, T(B)292 through T(B)417. |
| SA226–AT. | AT001 through AT069, AT071 through AT074. |
| SA226–TC. | TC201 through TC419. |

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated in the body of this AD, unless already accomplished.

To prevent the main wheel brakes from overheating because of the existing brake master cylinders not totally releasing the brake hydraulic pressure and causing the brakes to drag, which could result in a wheel well area fire, loss of control of the airplane, and/or passenger injury during landing, takeoff, or taxi operations, accomplish the following:

(a) Within the next 300 hours time-in-service (TIS) after the effective date of this AD, replace the existing brake master cylinders with improved design brake master cylinders as specified in the service information presented below (or FAA-approved equivalent part numbers). Accomplish this replacement in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin 226–32–046, which incorporates the following pages:

| Pages | Revision level and date |
|---|---|
| 4, 5, 6, 8, 9, and 10. | Issued: November 29, 1983. |
| 1, 2, 3, and 7. | Revised: March 19, 1984. |

(b) As of the effective date of this AD, no person may install, on any affected airplane, brake master cylinders that are not of improved design, part numbers as specified in the service information in paragraph (a) of this AD (or FAA-approved equivalent part numbers).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector,

who may add comments and then send it to the Manager, Fort Worth ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 9, 1999.

**Marvin R. Nuss,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–3887 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–286–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes. This proposal would require replacement of fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins. This proposal is prompted by reports of cracked fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut due to fatigue and corrosion. The actions specified by the proposed AD are intended to prevent cracking or corrosion of the fuse pins of the nacelle strut, which could result in failure of the fuse pin and strut-to-wing attachment, and consequent loss of the strut and separation of the engine from the airplane.

**DATES:** Comments must be received by April 5, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–286–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received numerous reports indicating that cracking of various structural members of the strut-to-wing attachment has been detected on Boeing Model 747 series airplanes on which certain strut/wing modifications have not been accomplished. In addition, the FAA has received reports indicating that cracking has been detected in ''bulkhead-style'' fuse pins (made of 4330 or 4340 steel) installed in the upper link, midspar fittings, and diagonal brace of the nacelle strut. Such cracking has been attributed to fatigue and corrosion. This condition, if not corrected, could result in failure of the fuse pin and strut-to-wing attachment, and consequent loss of the strut and separation of the engine from the airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996, which describes procedures for replacement of the fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new ''third-generation'' corrosion-resistant pins (made of 15–5 steel). In addition to removal of the existing pins and installation of new pins, the procedures for replacing the pins in the midspar fittings include measurement of the distance between the midspar pin, nut, and retainer and the hydraulic supply line of the Engine Driven Pump (EDP); and replacement of the hydraulic supply line of the EDP with new parts, if necessary.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Other Relevant Rulemaking

Repetitive inspections of the fuse pins of the upper link, midspar fittings, and diagonal brace are required by AD 97–14–06, amendment 39–10064 (62 FR 35953, July 3, 1997); AD 92–24–51, amendment 39–8439 (57 FR 60118, December 18, 1992); and AD 93–03–14, amendment 39–8518 (58 FR 14513, March 18, 1993); respectively. Accomplishment of the replacement of fuse pins of the upper link, midspar fitting, and diagonal brace in accordance with this proposed AD would terminate the repetitive inspection requirements for the fuse pins in those areas.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

Operators should note that the effectivity listing of Boeing Service Bulletin 747–54–2155 includes certain Model 747 series airplanes regardless of the type of engine. This proposed AD is applicable only to Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines, and Model 747–400 series airplanes; as listed in that service bulletin. The replacement of fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins is already required as part of the modification of the nacelle strut/wing structure for earlier Model 747 series airplanes, in accordance with AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995); AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995); AD 95–13–06, amendment 39–9286 (60 FR 33338, June 28, 1995); and AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995).

Operators also should note that Boeing Service Bulletin 747–54–2155 recommends that the fuse pins in the upper link, midspar fittings, and diagonal brace be replaced with new, corrosion-resistant pins at the next scheduled inspection of the pins. This proposed AD would require that such replacement be accomplished within 10 months after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the age of the service information, and the time necessary to perform the pin replacement. In light of all of these factors, the FAA finds a 10-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**Cost Impact**

There are approximately 282 airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 105 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $270,900, or $6,300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 98–NM–286–AD.

*Applicability:* Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines, and Model 747–400 series airplanes; as listed in Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996; certificated in any category; except those airplanes on which modifications of the strut/wing structure have been accomplished in accordance either of the following AD's:

- AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995), or
- AD 95–13–06, amendment 39–9286 (60 FR 33338, June 28, 1995).

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent cracking or corrosion of the fuse pins of the nacelle strut, which could result in failure of the fuse pin and strut-to-wing attachment, and consequent loss of the strut and separation of the engine from the airplane; accomplish the following:

(a) Within 10 months after the effective date of this AD, replace the fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996.

**Note 2:** Replacement of the fuse pins accomplished prior to the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–54–2155, dated September 23, 1993, or Revision 1, dated December 8, 1994, is considered acceptable for compliance with the applicable action specified in this amendment.

**Note 3:** All fuse pins in the strut do not have to be replaced at the same time; however, the fuse pins do have to be replaced in sets, as specified in Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996.

(b) Accomplishment of the replacement of the fuse pins specified in paragraph (a) of this AD constitutes terminating action for the repetitive inspections of the fuse pins of the upper link, required by AD 97–14–06, amendment 39–10064; of the fuse pins of the midspar fitting, required by AD 92–24–51,

amendment 39–8439; and of the fuse pins of the diagonal brace, required by AD 93–03–14, amendment 39–8518.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 10, 1999.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–3886 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–308–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by March 22, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–308–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–308–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that the brackets on the rear pressure bulkhead that support the elevator and rudder control cable pulleys, in addition to the bolts and sleeves on which the pulleys rotate, have been determined to be of inadequate strength to support the pulleys. In the event of an elevator or rudder control cable jam, such inadequate strength of these parts, combined with input loads from each pilot, could result in failure of the pulley assemblies of the elevator and rudder control cables. This condition, if not corrected, could result in reduced controllability of the airplane.

### Explanation of Relevant Service Information

British Aerospace has issued Jetstream Service Bulletin J41–27–052, dated September 11, 1998, which describes procedures for modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead. The modification involves installing reinforcing plates on the brackets that support the lower elevator and rudder pulley assembly, and replacing the bolts and sleeves of the lower and upper elevator and rudder pulley assemblies with new bolts and sleeves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 006–09–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

### FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary

for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 60 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]:** Docket 98–NM–308–AD.

*Applicability:* All Jetstream Model 4101 airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead, in accordance with Jetstream Service Bulletin J41–27–052, dated September 11, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 006–09–98.

Issued in Renton, Washington, on February 11, 1999.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–4015 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–307–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes. This proposal would require an inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane.

**DATES:** Comments must be received by March 22, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this

location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–307–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–307–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1–11 200 and 400 series airplanes. The CAA has received two reports of cracking of flap control levers installed on these airplanes. Certain control levers were cast from L53 aluminum alloy, a material which is known to be prone to stress corrosion cracking. Such stress corrosion cracking could cause failure of the flap control lever. This condition, if not corrected, could result in restricted flap movement and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

British Aerospace has issued Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998, which describes procedures for a one-time detailed visual inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 003–08–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

**FAA's Conclusions**

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously.

**Cost Impact**

The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,520, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group):** Docket 98–NM–307–AD.

*Applicability:* All Model BAC 1–11 200 and 400 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the flap control lever to detect cracking, and to identify the type of aluminum alloy from which the flap control lever is made, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998.

(1) If no crack is detected and the lever is made of L97 or L99 aluminum alloy, no further action is required by this AD.

(2) If no crack is detected, and the lever is made of L53 aluminum alloy or the material of the flap control lever cannot be identified, repeat the inspection thereafter at intervals not to exceed 24 months; or prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. Following such replacement, no further action is required by this AD.

(3) If any crack is detected, prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. After the replacement, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 003–08–98.

Issued in Renton, Washington, on February 11, 1999.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–4014 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–220–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. This proposal also would require cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which would constitute terminating action for the repetitive inspections proposed by this AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane.

**DATES:** Comments must be received by March 22, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–220–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

98–NM–220–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that, during full-scale fatigue testing on a test article, cracking was found in the front spar of the horizontal stabilizer at the intersection between the rear fuselage and the front upper spar cap. Further investigation revealed that the fatigue cracking may have originated at one of the fastener holes in the upper part of the web of the front spar. Such fatigue cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

**Explanation of Relevant Service Information**

The manufacturer has issued SAAB Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, which describes procedures for repetitive detailed visual and eddy current inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers.

The manufacturer also has issued SAAB Service Bulletin 340–55–034, dated October 16, 1998, which describes procedures for cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions. The follow-on actions involve performing eddy current inspections of specified areas to detect cracking of certain fastener holes before and after cold working and after oversizing any hole. The service bulletin also describes procedures for installation of new fasteners into certain holes of the front spar of the horizontal stabilizers. Accomplishment of these actions would eliminate the need for the repetitive inspections described in Saab Service Bulletin 340–55–033.

Accomplishment of the actions specified in the Saab service bulletins is intended to adequately address the identified unsafe condition. The LFV classified these service bulletins as mandatory and issued Swedish airworthiness directives 1–110R2, dated December 7, 1998, and 1–133, dated October 20, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

**FAA's Conclusions**

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

**Differences Between Proposed Rule and Service Information**

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for the disposition of certain cracking conditions around certain fastener holes of the front spar of the horizontal stabilizers, this AD would require repair of any fatigue cracking to be accomplished in accordance with a method approved by either the FAA, or the LFV (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the LFV is acceptable for compliance with this AD.

**Cost Impact**

The FAA estimates that 279 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to perform the detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $66,960, or $240 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane to accomplish the proposed eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $100,440, or $360 per airplane, per inspection cycle.

It would take approximately 42 work hours to accomplish the cold working of the fastener holes, at an average labor rate of $60 per work hour. Required parts would cost approximately $400 per airplane. Based on these figures, the cost impact of the cold work proposed by this AD on U.S. operators is estimated to be $814,680, or $2,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Saab Aircraft AB:** Docket 98–NM–220–AD.

*Applicability:* Model SAAB SF340A series airplanes, manufacturer's serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers –160 through –439 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For SAAB SF340A series airplanes with manufacturer's serial numbers –004 through –159 inclusive: Perform inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat the eddy current inspection at intervals not to exceed 12,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 22,000 total flight cycles as of the effective date of this AD: Perform an eddy current inspection prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 22,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current inspection within 1,200 flight cycles after the effective date of this AD.

(b) For SAAB 340B series airplanes with manufacturer's serial numbers –160 through –439 inclusive: Perform inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Thereafter, repeat the eddy current inspection at intervals not to exceed 6,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Perform an eddy current inspection prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles and less than 16,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 16,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current inspection within 1,200 flight cycles after the effective date of this AD.

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, either repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent); or accomplish the requirements of paragraph (d) of this AD.

**Note 2:** Inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers that have been accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340–55–033, Revision 03, dated January 22, 1998, are considered acceptable for compliance with the applicable action specified by this AD.

(d) For all airplanes: Except as provided by paragraph (e) of this AD, accomplish cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and install new fasteners; in accordance with Saab Service Bulletin 340–55–034, dated October 16, 1998; at the time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Accomplishment of this action constitutes terminating action for this AD.

(1) For all airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Within 10,000 flight cycles after the effective date of this AD.

(2) For all airplanes that have accumulated 26,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Within 6,000 flight cycles after the effective date of this AD.

(3) For all airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(e) If any crack is detected during the accomplishment of paragraph (d) of this AD, and if the service bulletin listed in paragraph (d) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the LFV (or its delegated agent).

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Swedish airworthiness directives 1–110R2, dated December 7, 1998, and 1–133, dated October 20, 1998.

Issued in Renton, Washington, on February 11, 1999.

**John J. Hickey,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 99–4013 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–AGL–11]**

## Proposed Establishment of Class E Airspace; and Modification of Class E Airspace; Alpena, MI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace and modify Class E airspace at Alpena, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 012° helicopter point in space approach, has been developed for Alpena General Hospital Heliport, Alpena, MI. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Alpena, MI, in order to include the point in space approach serving Alpena General Hospital Heliport. In addition, air carrier operations are conducted into and out of the airport during periods of time when the airport traffic control tower (ATCT) is closed. This action would create a Class E surface area during periods of time when the ATCT is closed to better accommodate those operations.

**DATES:** Comments must be received on or before April 2, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7 Rules Docket No. 99–AGL–11, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–11.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace and modify Class E airspace at Alpena, MI, to accommodate aircraft executing the proposed GPS SIAP 012° helicopter point in space approach for Alpena General Hospital Heliport by modifying existing controlled airspace, and to accommodate air carrier operations during periods of time when the ATCT is closed by establishing a new Class E surface area. Controlled airspace extending upward from the surface is needed to contain aircraft executing the instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface are published in paragraph 6002 and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6002 Class E airspace areas designated as surface areas.*

* * * * *

**AGL MI E2 Alpena, MI [New]**

Alpena County Regional Airport
(Lat. 45°04′41″ N., long. 83°33′37″ W.)
Alpena VORTAC

(Lat. 45°04′58″ N., long. 83°33′25″ W.)
Within a 4.4-mile radius of the Alpena County Regional Airport, and within 2.5 miles each side of the Alpena VORTAC 350° radial, extending from the 4.4-mile radius of the airport to 7.0 miles north of the VORTAC, and within 2.5 miles each side of the Alpena VORTAC 187° radial, extending from the 4.4-mile radius of the airport to 7.0 miles south of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Alpena, MI [Revised]**

Alpena County Regional Airport
(Lat. 45°04′41″ N., long. 83°33′37″ W.)
Alpena VORTAC
(Lat. 45°04′58″ N., long. 83°33′25″ W.)
FELPS NDB
(Lat. 44°57′39″ N., long. 83°33′36″ W.)
Alpena General Hospital, MI
Point in Space Coordinates
(Lat. 45°04′38″ N., long. 83°26′53″ W.)
That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Alpena County Regional Airport and within 4.0 miles each side of the 180° bearing from the FELPS NDB extending from the 7.0-mile radius to 12.3 miles south of the Alpena VORTAC, and within a 6.0-mile radius of the Point in Space serving Alpena General Hospital.

* * * * *

Issued in Des Plaines, Illinois on January 29, 1999.

**Michelle M. Behm,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 99–4018 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–98–091]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Hackensack River, NJ

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the Drawbridge Operation Regulations governing the S46 Bridge, mile 14.0, across the Hackensack River at Little Ferry, New Jersey. This proposal will require the bridge to open on signal after a twenty four hour advance notice is given by calling the number posted at the bridge. There have been no requests to open the S46 Bridge since 1978. This rule is expected to relieve the bridge owner of the requirement to crew the bridge and still meet the needs of navigation.

**DATES:** Comments must be received by the Coast Guard on or before April 19, 1999.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them to the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this matter by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–091) and specific section of this proposal to which their comments apply, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in response to comments received. The Coast Guard does not plan to hold a public hearing; however, persons may request a public hearing by writing to the Coast Guard at the address listed under **ADDRESSES** in this document. If it is determined that the opportunity for oral presentations will aid this matter, the Coast Guard will hold a public hearing at a time and place announced by a subsequent notice published in the **Federal Register.**

### Background

The S46 Bridge, at mile 14.0, in Little Ferry, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water.

The S46 Bridge is presently required under § 117.723(f) to open on signal if at least six (6) hours advance notice is given.

### Discussion of Proposal

The Coast Guard proposes to amend the regulations to require that the S46 Bridge open on signal after a twenty four hour notice is given by calling the number posted at the bridge. The bridge owner, the New Jersey Department of Transportation, has requested that the advance notice requirement be changed to twenty four hours. The Coast Guard believes this is a reasonable proposal because the bridge owner has not received a request to open the bridge since 1978.

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that no requests to open this bridge have been made since 1978.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

### Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has

determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this proposed rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.723(f) is revised to read as follows:

**§ 117.723 Hackensack River.**

* * * * *

(f) Except as provided in paragraph (a)(1) of this section, the draw of the S46 Bridge, at mile 14.0, in Little Ferry shall open on signal after a twenty four hour advance notice is given by calling the number posted at the bridge.

* * * * *

Dated: February 5, 1999.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 99–3942 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD27–1–6150; FRL–6303–8]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision to Maryland's Regulations requires all major sources of nitrogen oxides ($NO_X$) to implement reasonably available control technology (RACT) and was submitted to comply with the $NO_X$ RACT requirements of the Clean Air Act (the Act). Also, Maryland's regulations are being amended by adding three definitions and amending the definition for ''fuel burning equipment.'' The intended effect of this action is to propose conditional limited approval of the Maryland $NO_X$ RACT regulation, and also to propose full approval of the new and revised definitions submitted by the State of Maryland.

**DATES:** Written comments must be received on or before March 22, 1999.

**ADDRESSES:** Written comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Donahue, (215) 814–2095, at the above EPA Region III address, or via e-mail at donahue.carolyn@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On July 11, 1995, the Maryland Department of the Environment (MDE) submitted a revision to its State Implementation Plan (SIP) for the control of $NO_X$ emissions from major sources. The revision consisted of a new version of Code of Maryland Regulations (COMAR) Title 26, Subtitle 11, Chapter 09 ''Control of Fuel Burning Equipment and Stationary Internal Combustion Engines,'' Regulation 26.11.09.08 ''Control of $NO_X$ Emissions from Major Stationary Sources,'' which repealed and replaced the existing version of COMAR 26.11.09.08 (hereafter Regulation .08). The new Regulation .08 requires major $NO_X$ sources in ozone nonattainment areas classified as moderate and above and/or located in the Ozone Transport Region (OTR) to comply with RACT requirements by May 31, 1995. Section B of COMAR 26.11.09.01 ''Definitions,'' has been amended to include definitions for the terms ''annual combustion analysis,'' ''space heater'' and ''system'' used in Regulation .08. Also, the definition for ''fuel burning equipment'' has been expanded to include stationary internal combustion engines and stationary combustion turbines.

Section 182 of the Act defines a major $NO_X$ source as one that emits or has the potential to emit 25 or more tons of $NO_X$ per year (TPY) in any ozone nonattainment area classified as severe, or 50 or more TPY located in any ozone nonattainment area classified as serious. For any area in the OTR classified as attainment or marginal nonattainment, §§ 182 and 184 of the Act define a major stationary source of $NO_X$ as one that emits or has the potential to emit 100 or more TPY. Section 182 requires that RACT on major stationary sources of $NO_X$ be implemented by no later than May 31, 1995.

The major source size is determined by its location, the classification of that area, and whether it is located in the OTR, which is established by the Act. The Baltimore nonattainment area and Cecil County are classified as severe nonattainment areas. Calvert, Charles, Frederick, Montgomery and Prince George's Counties are classified as serious ozone nonattainment areas. The remaining counties in Maryland are classified as marginal or in attainment but are located in the OTR and therefore are treated as if they are classified as moderate nonattainment areas.

**II. Summary of Maryland's SIP Revision**

Maryland submitted this SIP revision, establishing definitions and standards for operation of major $NO_X$ sources, on June 8, 1993, and submitted two sets of amendments on July 11, 1995. Maryland

adopted the new Regulation .08 on April 13, 1993. Regulation .08 became effective on May 10, 1993. Maryland adopted the first set of amendments on May 24, 1994. These amendments became effective June 20, 1994. Maryland adopted the second set of amendments on April 13, 1995. The second set of amendments became effective on May 8, 1995.

*COMAR 26.11.09.01 Definitions*

COMAR 26.11.09.01, ''Definitions,'' has been revised to add the terms ''annual combustion analysis,'' ''space heater,'' and ''system'' which are used in Chapter 09, ''Control of Fuel Burning Equipment and Stationary Internal Combustion Engines.'' Also, the definition for ''fuel burning equipment'' has been expanded to include stationary internal combustion engines and stationary combustion turbines.

*COMAR 26.11.09.08 Control of $NO_X$ Emissions From Major Stationary Sources*

COMAR 26.11.09.08.A Applicability

Section A establishes the applicability of this regulation to owners or operators of an installation that is located at a premises that has a total potential to emit: 25 or more TPY in Baltimore City, Anne Arundel, Baltimore, Carroll, Harford, Howard Counties (the Baltimore severe nonattainment area) and Cecil County (part of the Philadelphia-Wilmington-Trenton severe nonattainment area), 50 or more TPY in Calvert, Charles, Frederick, Montgomery, and Prince George's Counties (the Maryland portion of the Washington, DC serious nonattainment area), or 100 or more TPY in Allegany, Caroline, Dorchester, Garrett, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, or Worcester Counties.

Sections B through G of Regulation .08 apply to an owner or operator of a major $NO_X$ source installation, except for those sources covered under §§ H and J, that meets the $NO_X$ emission standards in § C of this regulation or is required to submit a RACT determination to MDE. Section H of this regulation applies to owners or operators of a space heater, which is defined in COMAR 26.11.09.01 as fuel burning equipment that consumes more than 60% of its annual fuel use between October 31 of one year and March 31 of the next. Section J applies to an owner or operator of fuel burning equipment with a rated heat input capacity of 100 million British thermal units (MMBtu) per hour or less. Sources subject to § H are not subject to § J. Except for a source or modification which is subject to new source review and/or prevention of significant deterioration (NSR/PSD) and, therefore, subject to lowest achievable emission rate (LAER) and/or best available control technology (BACT) requirements, a person subject to this regulation may not construct a new or replace an existing $NO_X$ source after May 8, 1995, unless the source meets RACT as determined by MDE and approved by EPA.

COMAR 26.11.09.08.B $NO_X$ Control Requirements

All major sources of $NO_X$, except those provided for in §§ H and J, are required to notify MDE that each installation will comply by meeting the emission standards of § C, or submit a proposal with technical and economic support documentation for a case-by-case RACT determination and a schedule to implement RACT no later than May 31, 1995. In cases where the owner elects to comply with the presumptive limits of § C, the owner or operator is required to submit: (1) Stack testing or continuous emission monitoring (CEM) data to support that the source or unit already is in compliance with the applicable limit, or (2) a plan for compliance. The plan for compliance must include the control method, equipment purchase dates, construction dates and a compliance date not later than May 31, 1995.

Notification to MDE and submittal of a RACT proposal and schedule must have been made no later than July 1, 1993 by persons who own electric generating plant equipment subject to Title IV, Phase I of the Act. RACT proposals must include: (1) Identification of combustion modifications, fuel conversions, or other modifications to be implemented, (2) data and costs to support the proposed RACT standard, (3) a demonstration that shows why the proposed standard is RACT for the particular installation, the expected emissions reduction, and any available emissions data for existing operating installations, and (4) baseline $NO_X$ emissions for the installation established with CEM data or stack test data taken during steady state operation. By February 15, 1994, owners of sources subject to this regulation, other than electric generating plant equipment subject to Title IV, must have submitted a RACT proposal that identified combustion modifications, fuel conversions, or other equipment or process modifications or adjustments to reduce $NO_X$ emissions, and data that support the proposed RACT standard.

COMAR 26.11.09.08.C Emission Standards

Maryland's proposed $NO_X$ RACT regulation contains presumptive emission limits for major stationary sources of $NO_X$ as follows: for gas fired wall and tangential units, 0.2 pounds of $NO_X$ per million British thermal units (lbs/MMBtu) input; for oil/gas fired wall and tangential units, 0.25 lbs/MMBtu input; for oil/gas fired cyclones, 0.43 lbs/MMBtu input; for dry bottom coal fired wall and tangential units, 0.38 lbs/MMBtu input; for wet bottom coal fired wall and tangential units, 1.0 lb/MMBtu input; and for wet bottom coal fired cyclones, 0.55 lbs/MMBtu. All emission limits are required to be met over a 24-hour averaging period.

EPA is proposing to approve the above emission limits as RACT for those categories of boilers and steam generators referenced in § C(2). The 24 hour-averaging period for determining compliance is consistent with protection of the short-term ozone NAAQS. EPA policy for $NO_X$ RACT for four categories of utility boilers (wall- and tangential-fired—gas/oil, coal dry bottom), were set in the ''$NO_X$ Supplement to the General Preamble for Implementation of Title I'' (''$NO_X$ Supplement'') (57 FR 55620, November 25, 1992). Emission limits for other source categories are RACT for $NO_X$ if comparable to RACT for these certain utility boilers. Comparability is based upon emission reduction, cost and cost-effectiveness. EPA has determined that the limits set in this regulation for these same four categories of utility boilers as in the $NO_X$ Supplement meet the requirement for RACT.

COMAR 26.11.09.08.D Emission Reduction Averaging (RACT Bubbles)

Section D allows sources to use an alternative method of compliance by achieving an overall source or system-wide $NO_X$ emission reduction that is equivalent to reductions achieved had RACT been implemented on an individual installation basis. Section D permits MDE to allow the inclusion of sources outside Maryland in an emissions trade consistent with the policies of the EPA and the Ozone Transport Commission. A source proposing to average $NO_X$ emissions must maintain records for at least 3 years to demonstrate continuous compliance with this regulation. Records must include daily hours of operation, total daily production or fuel use, and an estimate of the total daily emissions from the premises or system. Also, a RACT proposal that involves fuel switching must be consistent with

fuel switching policies established by EPA. EPA's fuel switching policy allows major coal fired facilities to switch to burning natural gas during the ozone season (the summer months) and switch back to coal for the rest of the year, provided that annual standards are met.

COMAR 26.11.09.08.E & F Compliance Date and Reporting Requirements

Major $NO_X$ source owners or operators must have complied with RACT standards by May 31, 1995. Compliance with RACT requirements should be based on CEM data collected in accordance with COMAR 26.11.09.10 and .11, which are consistent with EPA approved methods. If the installation is stack tested, Method 7 must be used, and the results must be submitted to MDE within 45 days after test completion.

COMAR 26.11.09.08.G Establishing Enforceable RACT Standards

RACT for $NO_X$ emissions must be established by MDE as a condition to a permit or order, or in a regulation promulgated by MDE. This provision requires that MDE submit each RACT determination to EPA for approval as a revision to the Maryland SIP.

COMAR 26.11.09.08.H Requirements for Space Heaters

Section H establishes that a space heater owner or operator must submit to MDE a list of the affected installations at each premises, the types of fuel used, the monthly fuel consumption for each installation for each calendar year beginning with 1989, and fuel use summaries demonstrating that the 60% requirement, as explained in the definition of space heater, is met. The owner or operator also must develop an operating and maintenance plan to minimize $NO_X$ emissions, based on equipment vendors recommendations and subject to review by MDE, and must have implemented this plan by November 15, 1994. Operators are required to attend in-state training programs on $NO_X$ reductions at least once every three years, and the owner must maintain a record of training attendance for each operator for no less than 6 years. These records should be made available to MDE upon request. EPA interprets ''an operation and maintenance plan to minimize $NO_X$ emissions based on recommendations from equipment vendors,'' as stated in § H(b), to mean only technically supportable operation and maintenance requirements that result in the equipment being operated, maintained and repaired in a manner that achieves the minimization of $NO_X$ emissions.

Any fuel burning equipment that at any time after October 1, 1989 has not satisfied the conditions for a space heater, specified in COMAR 26.11.09.01.B(7), is subject to RACT as determined by MDE. The owner or operator of this equipment must submit a RACT proposal to MDE for approval not later than 60 days after the date when the equipment did not qualify as a space heater. Also, a space heater owner or operator must maintain monthly fuel consumption records on site for not less than 3 years, and must make these records available to MDE upon request.

COMAR 26.11.09.08.I General Requirements

Section I states that the owner or operator of a major $NO_X$ source must provide emissions data, perform stack tests and identify cost effective control methods at the request of MDE. After implementing RACT according to this regulation, if a major $NO_X$ source causes actual $NO_X$ emissions of 1 or more tons per day, the owner must submit to MDE a description of $NO_X$ emission reduction methods. This description must outline measures to reduce $NO_X$ emissions beyond the level achieved by implementing RACT according to this regulation, and must consist of methods to reduce $NO_X$ emissions by 25, 50, and 75% from base year emissions beyond what was required by RACT in case additional $NO_X$ reductions are determined to be necessary by MDE. Also, except as provided in § H, a person subject to this regulation must maintain annual fuel use records on site for not less than 3 years, and must make these records available to MDE upon request.

COMAR 26.11.09.08.J Requirements for Fuel Burning Equipment With a Rated Heat Input Capacity of 100 MMBtu/hr or Less

Section J establishes that, by May 8, 1995, the owner or operator of fuel burning equipment with rated heat input capacity less than 100 MMBtu per hour must have submitted to MDE a list of each affected installation, the rated heat capacity of each installation, and the fuel used. Also, the monthly consumption of each fuel for each installation for calendar year 1990 through 1993, and the results of any stack tests performed must have been submitted to MDE. For installations burning coal or residual oil, this section requires the owner to have submitted to MDE a discussion of feasibility and cost of switching to gas or No. 2 fuel oil. The owner or operator must also have completed a combustion analysis by May 15, 1995 and repeat this analysis annually, and operate the equipment at the optimum combustion level based on this analysis. From July 1, 1995 through January 1, 1996, combustion analyses were to be performed quarterly. Analysis and test results must be maintained for at least 2 years and be available to MDE and EPA upon request. Operators are also required to attend operator training on $NO_X$ reductions sponsored by MDE, EPA or equipment vendors at least once every 3 years, and records of training program attendance must be maintained and available for at least 6 years. Based on data from the Gas Research Institute, the $NO_X$ Implementation Workgroup, and the Council of Industrial Boiler Owners, MDE concluded that this section is acceptable as RACT for fuel burning equipment with a heat capacity of 100 MMBtu/hr or less. This is acceptable to EPA as RACT for these sources in Maryland.

## III. EPA's Analysis

*Emission Reduction Averaging*

Section D does not specifically address most of the state program requirements established for a discretionary Economic Incentive Program (EIP) contained in 40 CFR Part 51 Subpart U. Section D therefore is not sufficient to establish a generic emissions trading program—a program under which each trading transaction does not have to be approved by EPA as a SIP revision—because among other things it does not specify procedures by which the alternative limits will be set. Such procedures must demonstrate how an emissions trading program achieves overall reductions equivalent to RACT implemented on a per unit basis. Section D is not clear whether each emissions trading plan must be submitted to EPA for approval as a SIP revision, which is required in the absence of an EPA approved generic emissions trading program. However, § D also establishes minimum record keeping requirements for sources complying through emissions trading not contained elsewhere in the Maryland SIP. Any trading plans submitted as a separate SIP revisions do not need to be authorized by any prior portion of the SIP as far as approval by EPA is concerned. As a condition of this rulemaking, Maryland must revise the trading provision in this regulation to comply with a discretionary EIP or submit all emission trading plans as individual SIP revisions.

*CEM Requirements*

Section F does not clearly define which sources must use CEM and which must stack test to demonstrate compliance, but the applicability and record keeping requirements described in COMAR 26.11.01.10 and .11 pertain to this regulation. However, COMAR 26.11.01.11, referenced in § F to address CEM requirements, has not been submitted for inclusion in the Maryland SIP. Except for those sources in an emissions trading program which are covered under the record keeping provisions of § D, the record keeping requirements by which sources will demonstrate compliance with this regulation are not established. Maryland must either submit COMAR 26.11.01.11 to EPA for approval or revise § F in the $NO_X$ RACT rule to clearly explain the reporting and record keeping requirements.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of OAQPS, EPA issued guidance for approving state generic RACT regulations, like Maryland's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 $NO_X$ emissions, excluding the utility boiler $NO_X$ emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility $NO_X$ emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Maryland's generic $NO_X$ RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved by EPA and all but a de minimis level of non-utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the State's statutory obligation to implement RACT for all major sources. No major $NO_X$ source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of $NO_X$ subject to RACT under the Act, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the $NO_X$ RACT generic rule. In support of this proposed rulemaking, the State committed in a letter dated October 29, 1998 to submit, as SIP revisions, RACT determinations for all sources subject to $NO_X$ RACT within 12 months of EPA's final conditional approval of the generic rule.

## IV. Proposed Action

Because of the deficiencies discussed above, EPA cannot grant full approval of Maryland's $NO_X$ RACT rule. EPA is proposing conditional limited approval of COMAR 26.11.09.08 ''Control of $NO_X$ Emissions from Major Stationary Sources,'' and is proposing full approval of COMAR 26.11.09.01 ''Definitions'' which were both submitted on June 8, 1993 with amendments submitted on July 11, 1995 as revisions to the Maryland SIP.

*Terms of and Rationale for Conditional Approval*

EPA cannot grant full approval of Maryland's $NO_X$ RACT rule because not every major $NO_X$ source is covered by the presumptive limits in § C or RACT provisions in §§ H and J. Maryland has the option to submit individual RACT determinations as SIP revisions, thus the RACT rule will not be approvable until all of its components are approvable. Therefore, EPA is proposing conditional approval of Maryland's $NO_X$ RACT regulations, based on the State's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to MDE. Maryland submitted this commitment in a letter to EPA, dated October 29, 1998.

To fulfill the condition of this approval the State of Maryland must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic $NO_X$ RACT regulation:

1. Certify that it has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department, or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions (as described above);

2. Either submit COMAR 26.11.01.11 to EPA for approval, or revise § F to clearly explain the reporting and record keeping requirements in COMAR 26.11.09.08;

3. Change § D to unambiguously require all emissions trading plans and proposals be submitted as individual SIP revisions, or meet all the requirements of a discretionary EIP.

Once EPA has determined that the State has met these conditions, EPA shall remove the conditional nature of its approval and the Maryland $NO_X$ regulation SIP revision will, at that time, retain limited approval status. Should the State fail to meet the conditions specified above, the final conditional limited approval of the Maryland $NO_X$ RACT regulation SIP revision shall convert to a disapproval.

*Rationale for Also Proposing Limited Approval*

While EPA does not believe that the Maryland generic $NO_X$ RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also proposing limited approval of the Maryland generic RACT regulation on the basis that it strengthens the Maryland SIP. After Maryland has fulfilled the conditions of this rule and once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval.

EPA is proposing conditional limited approval of the Maryland $NO_X$ RACT regulation, COMAR 26.11.09.08. EPA is proposing conditional limited approval of this SIP revision based upon the commitment made by Maryland to submit all the case-by-case RACT proposals for sources it is currently aware of as being subject to the major source RACT regulations. In a letter dated October 29, 1998, Maryland committed to submitting all RACT determinations for the major $NO_X$ sources in the State, submitting COMAR 26.11.01.11, and revising the trading rule in COMAR 26.11.09.08.D.

## V. Administrative Requirements

*A. Executive Orders 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

*B. Executive Order 12875*

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by

consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

*D. Executive Order 13084*

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional and limited approvals of SIP submittals under sections 110 and 301, and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action of Maryland's $NO_X$ RACT rule does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and record keeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 9, 1999.

**W. Michael McCabe,**

*Regional Administrator, Region III.*

[FR Doc. 99–3996 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[FRL–6301–7]**

**RIN 2060–AG12**

## Protection of Stratospheric Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to list as acceptable with restrictions two substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program (59 FR 13044), and issued decisions on the acceptability and unacceptability of a number of substitutes. In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of halon substitutes in the fire suppression and explosion protection sector which have not previously been reviewed by the Agency. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

**DATES:** Written comments or data provided in response to this document must be submitted by April 19, 1999. A public hearing will be held if requested in writing. If a public hearing is requested, EPA will provide notice of the date, time and location of the hearing in a subsequent **Federal Register** notice. For further information, please contact the SNAP Coordinator at the address listed below under For Further Information.

**ADDRESSES:** Written comments and data should be sent to Docket A–91–42, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR, Part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Kelly Davis at the address listed below under **FOR FURTHER INFORMATION**. Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart B, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

**FOR FURTHER INFORMATION CONTACT:** Kelly Davis at (202) 564–2303 or fax (202) 565–2096, U.S. Environmental Protection Agency, Mail Code 6205–J, 401 M Street, SW, Washington, D.C. 20460. Overnight or courier deliveries should be sent to our 501–3rd Street, NW, Washington, DC, 20001 location.

**SUPPLEMENTARY INFORMATION:**

## Overview of This Action

This action is divided into four sections:



## I. Section 612 Program

### *A. Statutory Requirements*

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

*Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

*Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

*Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

*90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

*Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

*Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

### *B. Regulatory History*

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

## II. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the Addresses portion of this notice.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Fully acceptable substitutes (i.e., no restrictions) can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable within narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this NPRM, EPA is issuing its preliminary decision on the acceptability of certain substitutes not previously reviewed by the Agency. As described in the March 1994 rulemaking for the SNAP program (59 FR 13044), EPA believes that, as a general matter, notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that notice and comment rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate Notices of Acceptability in the **Federal Register**.

The sections below present a detailed discussion of the proposed substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix G. The comments contained in Appendix G provide additional information on a substitute. These comments are not part of the regulatory decision, and therefore they are not mandatory for use of a substitute. Nor should the comments listed in Appendix G be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users to apply all comments listed in the application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes, if any, in existing operating practices for the affected industry.

### *A. Fire Suppression and Explosion Protection*

EPA is proposing to list IG–100 and HCFC Blend E as acceptable halon substitutes subject to certain use conditions. In implementing its application of conditions to limit the use of alternatives under the SNAP program, EPA has sought to avoid overlap with other existing regulatory authorities. EPA believes that section 612 clearly authorizes imposition of use conditions to ensure safe use of replacing agents. EPA's mandate is to list agents that ''reduce overall risk to human health and the environment'' for ''specific uses.'' In light of this authorization, EPA only intends to set conditions for the safe use of halon substitutes in the workplace until OSHA incorporates specific language addressing gaseous agents in OSHA regulation. Under Public Law 91–596, section 4(b)(1), OSHA is precluded from regulating working conditions currently being regulated by another federal agency. EPA is specifically deferring to OSHA and has no intention to assume the responsibility for regulating workplace safety, especially with respect to fire protection. EPA's workplace use conditions will not bar OSHA from regulating under its P.L. 91–596 authority.

Additionally, EPA understands that, under the National Technology Transfer and Advancement Act of 1995, Section 12(d), Pub. L. 104–113, federal agencies are required to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities. EPA will consider adopting such technical standards as they become available.

1. Proposed Acceptable Subject to Use Conditions

*Total Flooding Agents. IG–100 is proposed acceptable as a Halon 1301 substitute for total flooding applications.* IG–100, which is composed of 100% nitrogen, is designed to lower the oxygen level in a protected area to a level that does not support combustion. The toxicological issues of concern with inert gas systems differ from those of halocarbon agent systems, since the endpoint for hypoxic (low oxygen) atmospheres associated with inert gas systems is asphyxiation, while the endpoint for halocarbon agents is cardiosensitization leading to cardiac arrhythmia. Peer reviews by medical specialists considering specific questions regarding exposure of a typical working population to inert gas fire suppression systems have provided sufficient information to support use conditions previously listed for IG–541, IG–55, and IG–01; EPA has determined these use conditions are appropriate for IG–100 as well.

Specifically, because the terms No Observed Adverse Effect Level (NOAEL) and Lowest Observed Adverse Effect Level (LOAEL) are not appropriate when considering the continuum of health effects associated with hypoxic atmospheres, EPA proposes a ''no effect level'' for inert gas systems at 12% oxygen, and a ''lowest effect level'' at 10% oxygen. Thus, consistent with the

OSHA conditions used by EPA for all total flooding agents, EPA proposes that an IG–100 system could be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% level if it takes longer than one minute to egress the area. If the possibility exists for the oxygen to drop below 10%, employees must be evacuated prior to such oxygen depletion. A design concentration of less than 10% oxygen may only be used in normally unoccupied areas, provided that any employee who could possibly be exposed can egress within 30 seconds.

EPA does not encourage any employee to intentionally remain in an area following discharge of IG–100 (or any other total flooding agent), even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.

EPA intends that all personnel be evacuated from an area prior to, or quickly after, discharge. An inert gas system may not be designed with the intention of personnel remaining in the area unless appropriate protection is provided, such as self-contained breathing apparatuses.

2. Proposed Acceptable Subject to Narrowed Use Limits

*Streaming Agents. HCFC Blend E is proposed acceptable as a Halon 1211 substitute for streaming agent uses in nonresidential applications.* This agent is a blend of an HCFC, an HFC, and an additive. The primary constituent, an HCFC, is currently listed as acceptable for use in non-residential streaming applications. The secondary constituent, an HFC, is listed acceptable as a flooding agent subject to use conditions. Upon combustion, the synergistic effect of these two compounds can result in the formulation of hydrochloric and other acids at levels potentially harmful to human health. The formulation of such byproducts of combustion is similar for many halocarbon fire extinguishing agents. The manufacturer claims the presence of the additive might help mitigate these potential effects.

This potential risk of human health effects, although it does not outweigh the risks associated with fire, necessitate limiting the use of this blend to non-residential applications only. EPA recommends that the potential risks associated with the use of this blend, as well as handling procedures to reduce such risk, be clearly labeled on each extinguisher containing this blend. Additionally, section 610(d) of the Clean Air Act and its implementing regulations prohibit the sale and distribution of HCFCs in fire extinguishers for residential applications. (See 61 FR 69671, December 4, 1996, and 58 FR 69637, December 30, 1993.)

EPA has reviewed the environmental impacts of this blend and has concluded that, by comparison to Halon 1211, it reduces overall risk to the environment. The ozone-depletion potential of the HCFC is 0.02; no other constituent in the blend has ozone-depleting characteristics. EPA's review of environmental and human health impacts of this blend is contained in the public docket for this rulemaking.

## III. Administrative Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

### *B. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure of $100 million or more in any one year by state, local, and tribal governments, in aggregate, or by the private sector. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, this proposed rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because costs of the SNAP requirements as a whole are expected to be minor. In fact, this proposed rule offers regulatory relief to small businesses by providing acceptable alternatives to phased-out ozone-depleting substances. The actions proposed herein may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

### *D. Paperwork Reduction Act*

EPA has determined that this proposed rule contains no information

requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved an Information Collection Request by EPA described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147); its OMB Control Number is 2060–0226.

*E. Applicability of Executive Order 13045: Children's Health Protection*

This rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

*F. Executive Order 12875: Enhancing Intergovernmental Partnerships*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

*G. The National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d), Pub. L. 104–113, requires federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

Although this proposed rule includes technical standards for exposure limits, there are no applicable voluntary consensus standards on this subject. EPA will consider adopting such technical standards as they become available.

*H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments, because this regulation applies directly to facilities that use these substances and not to governmental entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

## IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as EPA publications on protection of stratospheric ozone, are available from EPA's Ozone World Wide Web site at (http://www.epa.gov/ozone/title6) and from the Stratospheric Protection Hotline, whose number is listed above.

## List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: February 10, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

**Authority:** 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding the following Appendix G to read as follows:

## Subpart G—Significant New Alternatives Policy Program

* * * * *

**Appendix G to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [FR publication date] final rule, effective [30 days after FR publication date].**

**Summary of Proposed Decisions**

FIRE SUPPRESSION AND EXPLOSION PROTECTION TOTAL FLOODING AGENTS

[Substitutes Acceptable Subject to Use Conditions]

| End Use | Substitute | Decision | Conditions | Comments |
|---|---|---|---|---|
| Halon 1301, Total Flooding Agents. | IG–100 ..... | Acceptable ..... | Until OSHA establishes applicable workplace requirements:<br><br>IG–100 systems may be designed to an oxygen level of 10% if employees can egress the area within one minute, but may be designed only to the 12% oxygen level if it takes longer than one minute to egress the area.<br>If the possibility exists for the oxygen level to drop below 10%, employees must be evacuated prior to such oxygen depletion.<br>A design concentration of less than 10% many only be used in normally occupied areas, as long as an employee who could possibly be exposed can egress within 30 seconds. | EPA does not contemplate personnel remaining in the space after system discharge during a fire without Self-Contained Breathing Apparatus (SCBA) as required by OSHA.<br>EPA does not encourage any employee to intentionally remain in the area after system discharge, even in the event of accidental discharge. In addition, the system must include alarms and warning mechanisms as specified by OSHA.<br>See additional comments 1, 2. |

*Additional Comments*

1. Must conform with OSHA 29 CFR 1910, Subpart L, Section 1910.160.

2. Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must re-enter the area.

FIRE SUPPRESSION AND EXPLOSION PROTECTION STREAMING AGENTS

[Substitutes Acceptable Subject to Narrowed Use Limits]

| End use | Substitute | Decision | Limitations | Comments |
|---|---|---|---|---|
| Halon 1211, Streaming Agents. | HCFC Blend E ..... | Acceptable ..... | Nonresidential uses only. | |

[FR Doc. 99–3992 Filed 2–17–99; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

**[FRL–6301–8]**

**RIN 2060–AG12**

### Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for data and advance notice of proposed rulemaking.

**SUMMARY:** This action requests comments and information on n-propyl bromide (nPB) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990 (CAAA), which requires EPA to evaluate substitutes for ozone depleting substances (ODSs) to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into substitutes posing other environmental or health problems.

Through this Advance Notice of Proposed Rulemaking (ANPR), the Agency hopes to receive information as part of the development of effective regulatory options on the listing of nPB as acceptable or unacceptable for the various submitted end-uses under SNAP. This action notifies the public of the availability of information regarding nPB and the Agency hopes that this action will provide the public an opportunity to provide input at an early stage in the decision-making process.

This notice does not constitute a final, or even preliminary, decision by the Agency. Based on information collected as part of this ANPR, EPA intends to propose a future determination regarding the acceptability or unacceptability of nPB as a substitute for class I and class II ozone depleting substances and, if acceptable, an occupational exposure limit (OEL) for nPB. This limit would be designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under Public Law 91–596. However, until a final determination is made, users of nPB should exercise caution in the manufacture, handling, and disposal of this chemical.

EPA has received petitions under CAAA Section 612(d) to add nPB to the list of acceptable alternatives for class I and class II ozone depleting substances in the solvent sector for general metals, precision, and electronics cleaning, as well as in aerosol and adhesive applications.

**DATES:** Written comments on data provided in response to this notice must be submitted by April 19, 1999.

**ADDRESSES:** Comments on and materials supporting this advanced notice are collected in Air Docket # A–92–13, U.S. Environmental Protection Agency, 401

M Street, S.W., Room M–1500, Washington, D.C., 20460. The docket is located at the address above in room M–1500, First Floor, Waterside Mall. The materials may be inspected from 8 am until 4 pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** The Stratospheric Ozone Hotline at (800)–296–1996 or Melissa Payne at (202) 564–9738 or fax (202) 565–2096, Analysis and Review Branch, Stratospheric Protection Division, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to our 501 3rd Street, N.W., Washington, DC, 20001 location.

**SUPPLEMENTARY INFORMATION:**

This action is divided into four sections:



## I. Section 612 Program

### *A. Statutory Requirements*

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. This program is referred to as the Significant New Alternatives Policy (SNAP) program. Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and a corresponding list of acceptable alternatives for specific uses. Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c).

### *B. Regulatory History*

On March 18, 1994, EPA published the Final Rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability and unacceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

## II. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Fully acceptable substitutes, i.e., those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are placed on the ''acceptable, subject to use, conditions'' lists. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

## III. Information Needs

### *A. Objective*

As noted above, the purpose of today's notice is to elicit the voluntary submission of information on nPB as a substitute for class I and class II substances. Listed below are the specific areas of information that will be most useful to the Agency in completing the risk characterizations needed to make regulatory decisions. However, any available data pertaining to nPB will be considered by the Agency. Data submitted in response to this request can be designated as confidential business information (CBI) under 40 CFR, part 2, subpart B.

EPA has been reviewing the data available on nPB with regard to its toxicity and its ozone depletion potential. In order to ascertain the extent of potential environmental implications associated with the use of this chemical, the Agency is also interested in estimates of nPB production and ultimate use in various applications. Based on the assessment to date, the Agency believes that additional information in all of these areas is needed before regulatory decisions can be formulated. This notice is to inform the public of the information gaps and to make publicly available the data to which the Agency already has access. In this light, EPA is establishing a docket with all available information on the environmental and health risks associated with nPB, and is asking for comments and data that can supplement this information. EPA is seeking public comment regarding nPB in the following areas where EPA believes that either significant uncertainties exist in the available data or the data are incomplete. These areas are critical to EPA's decision-making on the acceptability or unacceptability of nPB.

*B. Ozone Depletion Potential*

The ozone depletion potential (ODP) of a chemical compound provides a relative measure of the expected impact on stratospheric ozone per unit mass of the emission of the compound, as compared to that expected from the same mass emission of CFC–11 integrated over time. ODP is a benchmark that has been used by the Parties to the Montreal Protocol to characterize the relative risks associated with the various ozone-depleting compounds subject to the Protocol's requirements. Under the auspices of the United Nations Environment Programme, every four years the world's leading experts in the atmospheric sciences publish a scientific assessment, relied upon by the Parties to the Montreal Protocol for future decisions regarding protection of the stratospheric ozone layer. These assessments evaluate the impacts of ozone depleting substances on stratospheric ozone concentrations using ODP. Prior analyses of ODP conducted by these experts, as well as by others in the field of atmospheric chemistry, have traditionally focused on compounds with relatively long atmospheric lifetimes (e.g., three months or longer) (WMO, 1994).

Recently, EPA has been called upon to review compounds of much shorter lifetimes, such as nPB, which has an estimated atmospheric lifetime of only 11 days. Estimates of ODP for nPB based on the current models lie within the range of 0.006–0.027 (Wuebbles et al., 1997 and 1998). The two-dimensional (2–D) and other models currently used to estimate the relative effects of long-lived compounds on stratospheric ozone, however, may not be as useful in measuring effects associated with compounds with very short atmospheric lifetimes.

Chemicals previously evaluated for ODP have atmospheric lifetimes sufficiently long to be well-mixed in the troposphere, and 2–D models have been adequate tools for ODP estimation. Short-lived substances (i.e., compounds with atmospheric lifetimes shorter than three months) such as nPB can either reach the stratosphere or, unlike long-lived compounds, break down in the troposphere. Thus, the amount of bromine that would be available to affect stratospheric ozone greatly depends on the complex effects of transport and chemical processes in the troposphere. Two-dimensional modeling is not designed to accurately account for variations in chemical concentration at different latitudes or for atmospheric transport of short-lived compounds. As a result, there are questions about the adequacy of the ODPs determined with these models for short-lived chemicals like nPB. Since current models may not accurately evaluate impacts of these short-lived compounds, EPA is concerned that it may be difficult to meaningfully compare them to the longer-lived compounds already controlled.

EPA is presently developing a process to more accurately determine ODPs for short-lived compounds. Independent atmospheric scientists are also in the process of refining current atmospheric models for this same purpose. The models are expected to examine a variety of questions related to convective transport rates at different latitudes, and the relative importance of transient versus steady-state effects. EPA expects this work to increase the accuracy of the ODP estimate for nPB, as well as for other short-lived compounds, and the Agency anticipates that these models will produce preliminary results within the next year. In addition, the Agency is interested in receiving from the public any other information pertaining to the atmospheric effects and ozone depletion potential of short-lived atmospheric chemicals (shorter than three months), and any additional information on the ozone depletion potential of nPB, specifically. EPA will make any new information accessible to the public as it becomes available by placing it in the docket identified in the **ADDRESSES** section of this document, and if appropriate, issue a notice of data availability in the **Federal Register** to insure that the public is aware of any new information.

*C. Toxicity*

Information on the toxicity of nPB was submitted to the Agency as part of the requirements of the SNAP program. Data from the submitters included the results of newly performed 28-day and 90-day repeated dose studies, both of which included a functional observation battery. A consortium of companies interested in nPB was formed after the initial data were submitted under the SNAP program. Other studies, not previously available to the public, were also submitted by a company that is not part of the consortium. Additional studies were available from the published scientific journals. A list of the studies received, evaluated, and placed in the docket is appended in Section VI.

EPA reviewed the literature to evaluate the potential metabolites of nPB and their expected toxicity following inhalation exposure. A structure-activity relationship analysis for potential carcinogenicity was part of this evaluation. The pharmacokinetics of nPB and its metabolites were also examined, as well as reports of other studies performed under non-guideline protocols. Data on structural analogues of nPB, such as 2-propyl bromide, were also reviewed. This information, and the reports of the acute (less than 14-day) studies, 28-day and 90-day inhalation studies can be used to estimate a tentative exposure limit for the use of nPB in industrial settings. The ''no observed adverse effect level'' (NOAEL) for liver effects in the 90-day study of 2000 milligrams per cubic meter (mg/$m^3$), or 400 parts per million (ppm), is a possible basis for setting an industrial exposure guideline (ICF 1998k). Based on this NOAEL, EPA's preliminary estimate of an exposure guideline is in the range of 50–100 ppm as an 8-hour time weighted average. Using the NOAEL for effects on sperm counts and motility from the Ichihara et al. (1998) study would result in a preliminary, estimated guideline of 93 ppm, suggesting that a range from 50–100 ppm would be protective of both liver and testicular effects. (This limit would be designed to protect worker safety until the Occupational Safety and Health Administration (OSHA) sets its own standards under P.L. 91–596. The existence of an EPA standard in no way bars OSHA from standard-setting under OSHA authorities as defined in P.L. 91–596.)

EPA also examined the potential uses of nPB in the solvent, aerosol, and adhesives, coatings and inks sectors and received additional personal monitoring data for these sectors. Preliminary consideration of the available personal monitoring data (Smith, 1998) during solvent, adhesive and aerosol usage indicates that nPB exposures can generally be kept within the range of 50–100 ppm, although some of the exposure measurements exceeded this range.

At this time, EPA cannot recommend a firm exposure limit because of identified areas of uncertainty. The fact that reproductive system effects have been observed in both rats and humans for the similar compound, 2-propyl bromide, as well as the report of oligospermia in rats exposed to nPB, raises concern that insufficient testing has been completed to fully evaluate these significant endpoints. The industry consortium has responded to these concerns by initiating studies to test the developmental and reproductive system effects of nPB. Results from these studies will not be available for another year.

Finally, EPA is aware that an isomer of nPB, 2-bromo-propane (2BP; also known as iso-propyl bromide), can be present as a contaminant in nPB formulations. Occupational exposure to 2BP has been associated with anemia and reproductive toxicity (Kim et al., 1996). Reproductive and hematopoietic effects of 2BP have also been demonstrated in animal studies (Takeuchi et al., 1997; Ichihara et al., 1996, 1997; Kamijima et al., 1997a,b). Should nPB be listed as acceptable under SNAP, the Agency would consider establishing maximum concentration limits for 2BP in applications involving nPB.

EPA is presenting and making publicly available the information it has received so that interested parties may evaluate these data for themselves and use it as guidance if they choose to use nPB until a proposal and final rule are in place. EPA is also interested in receiving additional information on human health and toxicological risks associated with exposure to nPB. As EPA receives new data, they will be added to the docket, along with notice of data availability in the **Federal Register**, as appropriate.

*D. Potential Use*

EPA is requesting information on the anticipated uses for nPB, the extent of its use in the different sectors (aerosols, solvents, adhesives, coatings, and inks), as well as estimated market potential. The Agency is also requesting information on the relative effectiveness of nPB versus the chemicals it would potentially replace, and the relative quantities of nPB that would be needed in various sectors compared to other chemicals that it would potentially replace. This information will provide the Agency information needed to assess potential environmental effects associated with use of nPB.

## IV. Regulatory Options

EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate Notices of Acceptability in the **Federal Register**.

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Dated: February 10, 1999.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 99–3993 Filed 2–17–99; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Parts 77, 80–83, 152, 207, 220–222, 301, 303, 306, 308, 320, 324, 325, 328, 333, and 336

**RIN 3067–AC91**

## Removal of Certain Parts of Title 44 CFR

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We propose to remove 20 parts from title 44 of the Code of Federal Regulations. The rules we are proposing to remove are no longer authorized, covered in other regulations, or are complete, discontinued, or otherwise obsolete. We invite your comments.

**DATES:** Please send your comments to us no later than April 19, 1999.

**ADDRESSES:** Please address your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646–4536, or (email) rules@fema.gov.

**FOR FURTHER INFORMATION CONTACT:** H. Crane Miller, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3340, (telefax) (202) 646–4536, or (email) crane.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The proposed removal of these rules is part of our continuing efforts to update and streamline FEMA regulations. Below are the parts that we propose to remove and reasons why we propose to remove them.

### Part 77—Acquisition of Flood Damaged Structures

The National Flood Insurance Reform Act of 1994 removed the authority underlying Part 77, Acquisition of Flood Damaged Structures, when it repealed § 1362 of the National Flood Insurance Act (Pub. L. 103–325, title V, § 551(a), Sept. 23, 1994, 108 Stat. 2269). Regulations governing acquisition of flood damaged structures are now found in 44 CFR 78.

### Parts 80—Description of Program and Offer to Agents, 81—Purchase of Insurance and Adjustment of Claims, 82—Protective Device Requirements, and 83—Coverages, Rates, and Prescribed Policy Forms

These parts contain the regulations for the Federal Crime Insurance Program (FCIP), the authorization for which expired on September 30, 1996. The Congress established the FCIP in 1970 under Title VI of the Housing and Urban Development Act of 1970 to make crime insurance available at affordable rates in any State where a critical market unavailability situation for crime insurance existed and had not been met through State action or to make affordable crime insurance available in states where no affordable crime insurance was available and the state had taken no action. No new crime insurance coverage is available under this program, and with the exception of a few remaining claims in process, the program is no longer active. See 12 U.S.C. 1749bbb(a).

### Part 152—State Grants for Arson Research

The authorization under the Arson Prevention Act of 1994 expired on September 30, 1996 and was not renewed by Congress. The Act authorized FEMA to make grants to States or consortia of States for competitive arson research, prevention and control grant awards. Part 152 established the uniform administrative rules under which the States or consortia of States applied for, and administered, the grants. The Director of FEMA delegated his responsibilities under the Act to the U.S. Fire Administration, which, working through its grantees, completed the research authorized under this program. See the Arson Prevention Act of 1994, Pub.L. 103–254, approved May 19, 1994, 108 Stat. 679.

### Part 207—Great Lakes Planning Assistance

The Great Lakes Planning Assistance Act of 1988, approved November 23, 1988, expired one year later and was not extended by Congress. The Act authorized FEMA's Director to assist 8 Great Lakes States (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) to reduce and prevent damage from high water levels in the Great Lakes. The assistance included a one-time grant up to $250,000 for preparation of mitigation and emergency plans, coordinating available State and Federal Assistance, developing and implementing measures to reduce damages due to high water levels, and assisting local governments in developing and implementing plans to reduce damages. The Act required the Great Lake States to submit grant applications within one year after the enactment of the Act—by November 23, 1989. See the Great Lakes Planning Assistance Act of 1988, Pub.L. 100–707, approved November 23, 1988, 102 Stat. 4711

### Parts 220—Temporary Relocation Assistance, 221—Permanent Relocation Assistance, and 222—Superfund Cost Share Eligibility Criteria for Permanent and Temporary Relocation

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URARPA) provides for moving costs, relocation benefits, and other expenses incurred by persons displaced as a result of Federal and federally assisted programs. Under § 2(c) of Executive Order 12580 of January 23, 1987 the President delegated to the Director of FEMA the functions vested in the President by the Act to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. Using redelegation authority granted elsewhere in the executive order, FEMA Acting Director Jerry D. Jennings redelegated FEMA's authority under § 2(c) of E.O. 12580 to the Environmental Protection Agency (EPA) on August 8, 1990. William K. Reilly, Administrator of EPA, gave his consent to the redelegation on October 31, 1990.

Effective April 2, 1989, EPA adopted the U.S. Department of Transportation regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Act. See 40 CFR 4.1. When FEMA delegated its relocation assistance authority to EPA in 1990, that redelegated authority came under the regulations and procedures of the U.S. Department of Transportation. We propose to remove this part because separate FEMA regulations on the subject are unnecessary and experience shows that these separate regulations cause confusion to those that seek relocation assistance under the Superfund and under FEMA's Hazard Mitigation Grant Program.

### Part 301—Contributions for Civil Defense Equipment

Part 301 prescribes the basic terms and conditions under which our Agency contributes Federal funds to States to procure civil defense equipment under the provisions of section 201(i) of the

Civil Defense Act of 1950. Repeal of the Civil Defense Act of 1950 and publication of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, make this part obsolete.

**Part 303—Procedure for Withholding Payments for Financial Contributions Under the Federal Civil Defense Act.**

Part 303 establishes a procedure by which the Director may withhold payments of financial contributions to States or persons, or may limit such payments to specified programs or projects under section 401(h) of the Civil Defense Act of 1950. Repeal of the Civil Defense Act of 1950 and publication of 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, make this part obsolete.

**Part 306—Official Civil Defense Insigne**

The authorization for the insigne no longer exists and the civil defense program has been merged into emergency preparedness. This part prescribes the official Civil Defense insigne authorized by the Federal Civil Defense Act of 1950 (FCDA). The insigne may be used by any State or local civil defense organization and by persons engaged in civil defense activities approved by such organizations. The rule also establishes requirements for the reproduction, manufacture, display, sale, possession, and wearing of the insigne. The Congress repealed the FCDA in 1994 (Pub.L. 103–337, approved October 5, 1994, 108 Stat. 2663, 3100–3111), and restated its authorities as Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). In this restatement, Congress did not include any provision authorizing the Civil Defense insigne.

**Part 308—Labor Standards for Federally Assisted Contracts**

FEMA no longer needs the special labor rules provided in this section. These regulations, combined with those in CFR 29, Part 5, prescribed the labor standards applicable to construction work financed, even in part, with Federal funds authorized by section 201(i) of the Federal Civil Defense Act of 1950, as amended, (50 U.S.C. App. 2281) and provided to any State (and to a political subdivision of the State, where applicable). The Secretary of Labor approved the regulations in part 308, to the extent that they varied from those published in 29 CFR part 5, to meet FEMA's particular needs. We no longer need separate rules to government labor standards and will rely on the Federal Acquisition Regulation (FAR) and Department of Labor regulations to cover labor standards for our contracts.

**Part 320—Dispersion and Protective Construction: Policy, Criteria, Responsibilities (DMO–1)**

This part describes the policy, criteria and responsibilities for new facilities and major expansions of existing facilities important to national security to reduce the risk of damage in the event of an attack. This rule does not conform with Administration policy, which eliminates FEMA's role in geographic dispersal of industry in the DPA's congressional policy statement. For this reason we propose to remove part 320.

**Part 324—National Security Policy Governing Scientific and Engineering Manpower (DMO–5)**

This part provides policy on the training and use of scientific and engineering manpower as it affects the national security. It states that ''each department and agency of the Federal Government should (a) review its current manpower policies and update its policies and programs for scientific and engineering manpower to assure their maximum contribution to national security and emergency preparedness, (b) base its policies and actions on projected peacetime and emergency requirements, and (c) encourage and support private sector efforts to assure the fulfillment of future requirements for this critical manpower resource.''

Issuance of any guidance on the subject is the responsibility of the Department of Labor under E.O. 12656. Under § 1201(1) of E.O.12656 the Secretary of Labor is to ''* * * issue guidance to ensure effective use of civilian workforce resources during national security emergencies.'' We propose to remove this part in recognition that each department and agency has responsibility for their scientific and engineering manpower policies, projected needs, and use of the private sector to help meet their needs, and to affirm that any guidance in this area to other departments and agencies is to be provided by the Department of Labor.

**Part 325—Emergency Health and Medical Occupations**

This part lists the Emergency Health and Medical Occupations for use during and after emergencies. The Department of Health and Human Services (HHS) and the U. S. Public Health Service (USPHS) are responsible for maintaining this list under the Federal Response Plan (FRP). In addition, under Sec. 801(1) of E.O. 12656, the Secretary of HHS is to ''develop national plans * * * to mobilize the health industry and health resources for the provision of health, mental health, and medical services in national security emergencies.'' We propose to remove this part to clarify and affirm the roles of HHS and USPHS in planning and providing information in this critical area.

**Part 328—General Policies for Strategic and Critical Materials Stockpiling (DMO–11)**

FEMA no longer has the responsibility for policies regarding the stockpiling of strategic and critical materials. E.O. 12626, National Defense Stockpile Manager, dated Feb. 25, 1988, transferred the FEMA Director's authorities to the Secretary of the Department of Defense. E.O. 12626 revoked E.O. 12155 of September 10, 1979, which initially delegated the responsibility for the national defense stockpile policy to the FEMA Director.

**Part 333—Peacetime Screening**

This part provides for FEMA to adjudicate any unresolved differences between the Department of Defense (DoD) and civilian employers that seek to exempt key employees who are members of the Ready Reserve from military duties. FEMA's role derives from a 1968 statement of understanding between DoD and the Office of Emergency Planning (OEP). FEMA succeeded to the responsibilities of OEP when President Carter established FEMA under Reorganization Plan No. 3 of 1978 and Executive Order 12148. Neither OEP nor FEMA ever adjudicated a difference between DoD and an employer under the authority of this part. The responsibility falls outside FEMA's principal areas of all-hazards emergency management. We do not have the experience, expertise, or resources to fulfill obligations under the part should the need arise, and are discussing an orderly transition with the Department of Defense.

**Part 336—Predesignation of Nonindustrial Facilities (NIF) for National Security Emergency Use**

This part describes policies and procedures under the NIF program to improve the Nation's ability to mobilize nonindustrial facilities (such as hotels, motels, office buildings, and educational institutions) for Department of Defense or essential civilian needs in times of national security emergencies. Predesignation of nonindustrial

facilities is no longer a priority in today's national security emergency environment. FEMA no longer provides policy, criteria, and planning guidance for this area. For these reasons we propose to remove this part.

**Compliance With Federal Administrative Requirements**

*National Environmental Policy Act*

Our regulations categorically exclude this proposed rule from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. We have not prepared an environmental assessment or an environmental impact statement.

*Regulatory Flexibility Act*

We do not expect this proposed rule (1) to affect small entities adversely, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities. The proposed rule would remove regulations for programs that are no longer authorized, covered in other regulations, or are complete, discontinued, or otherwise obsolete.

As Director I certify that this rule is not a major rule under Executive Order 12291 and that the rule will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

**Paperwork Reduction Act**

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

**List of Subjects**

*15 CFR Part 77*

Flood insurance, Grant programs—natural resources, Intergovernmental relations.

*15 CFR Part 80*

Crime insurance, Reporting and recordkeeping requirements.

*15 CFR Part 81*

Claims, Crime insurance, Reporting and recordkeeping requirements.

*15 CFR Part 82*

Crime insurance, and Security measures.

*15 CFR Part 83*

Crime insurance, Reporting and recordkeeping requirements.

*15 CFR Part 207*

Disaster assistance, Flood control, Grant programs—housing and community development, Great Lakes, Reporting and recordkeeping requirements, and Technical assistance.

*15 CFR Part 220*

Administrative practice and procedure, Disaster assistance, Grant programs—environmental protection, Grant programs—housing and community development, Hazardous substances, Relocation assistance, Reporting and recordkeeping requirements, and Superfund.

*15 CFR Part 221*

Disaster assistance, Grant programs—environmental protection, Grant programs—housing and community development, Hazardous substances, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, and Superfund.

*15 CFR Part 222*

Administrative practice and procedure, Disaster assistance, Grant programs—environmental protection, Hazardous substances, Intergovernmental relations, Relocation assistance, Reporting and recordkeeping requirements, and Superfund.

*15 CFR Part 301*

Civil defense, Grant programs—national defense, and Reporting and recordkeeping requirements.

*15 CFR Part 302*

Civil defense, Grant programs—national defense, and Reporting and recordkeeping requirements.

*15 CFR Part 303*

Administrative practice and procedure, Civil defense, and Grant programs—national defense.

*15 CFR Part 306*

Civil defense, Penalties, Seals and insignia.

*15 CFR Part 308*

Civil defense, Grant programs—national defense, Minimum wages, and Reporting and recordkeeping requirements.

*15 CFR Part 320*

National defense, Security measures.

*15 CFR Part 324*

Engineers, Manpower, National defense, and Scientists.

*15 CFR Part 325*

Health professions, Manpower, and National defense.

*15 CFR Part 328*

Strategic and critical materials.

*15 CFR Part 333*

Armed forces reserves.

For the reasons set forth in the preamble and under the authority of Reorganization Plan No. 3 of 1978, E.O. 12127, and E.O. 12148, 44 CFR, Chapter 1, is proposed to be amended by removing and reserving the following parts:

a. Part 77—Acquisition of Flood Damaged Structures;

b. Part 80—Description of program and offer to agents;

c. Part 81—Purchase of insurance and adjustment of claims;

d. Part 82—Protective device requirements;

e. Part 83—Coverages, rates, and prescribed policy forms;

f. Part 152—State grants for arson research, prevention, and control;

g. Part 207—Great Lakes planning assistance;

h. Part 220—Temporary Relocation Assistance;

i. Part 221—Permanent Relocation Assistance;

j. Part 222—Superfund cost share eligibility criteria for permanent and temporary relocation;

k. Part 301—Contributions for civil defense equipment;

l. Part 303—Procedure for withholding payments for financial contributions under the Federal Civil Defense Act;

m. Part 306—Official civil defense insigne;

n. Part 308—Labor standards for federally assisted contracts;

o. Part 320—Dispersion and protective construction: policy, criteria responsibilities (DMO–1);

p. Part 324—National security policy governing scientific and engineering manpower (DMO–5);

q. Part 325—Emergency health and medical occupations;

r. Part 328—General policies for strategic and critical materials stockpiling (DMO–11);

s. Part 333—Peacetime screening; and

t. Part 336—Predesignation of nonindustrial facilities (NIF) for national security emergency use.

Dated: February 10, 1999.

**James L. Witt,**

*Director.*

[FR Doc. 99–3879 Filed 2–17–99; 8:45 am]

BILLING CODE 6718–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 661**

**[Docket No. FTA–98–4454]**

**RIN 2132–AA62**

## Buy America Requirements; Amendment of Certification Procedures

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking (NPRM) seeks to amend the Federal Transit Administration's (FTA) Buy America regulation in conformance with a provision in the Transportation Equity Act for the 21st Century (TEA–21), which allows bidders to correct inadvertent errors in their Buy America certifications after bid opening. This NPRM describes and requests comment on FTA's proposed implementation of this provision of TEA–21.

**DATES:** Comments requested by April 19, 1999.

**ADDRESSES:** Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday, except Federal Holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www/access.gpo.gov/nara.

**FOR FURTHER INFORMATION CONTACT:** Rita Daguillard, Office of Chief Counsel, Federal Transit Administration, (202)366–1936.

**SUPPLEMENTARY INFORMATION:**

### I. FTA's Buy America Certification Requirements

FTA's Buy America requirements, set out at 49 U.S.C. 5323(j) and 49 CFR part 661, require that all steel, iron and manufactured goods purchased with FTA funds be produced in the United States. Under 49 CFR 661.13, FTA recipients are responsible for ensuring that their suppliers are in compliance with these requirements. Section 661.13(b) provides that recipients must notify potential bidders of the Buy America requirements in all specifications for FTA-funded procurements, and must require that bidders submit, as a condition of responsiveness of their bids, a completed Buy America certification. Accordingly, bids that are not accompanied by a completed Buy America certification must be rejected as nonresponsive to the recipient's specifications. The aim of this provision is to preserve the integrity of the procurement process by allowing recipients to know with absolute certainty at bid opening whether or not a bidder is able to comply with Buy America, and by preventing any possible fraud or manipulation that may occur if a bidder is allowed to change its certification after seeing the other bids.

The regulation contains no provision for a waiver of § 661.13(b), nor has FTA ever allowed such a waiver to be granted. Since the promulgation of FTA's Buy America regulation in 1978, submission of a completed Buy America certificate has been a condition of responsiveness in FTA-funded contracts. Bids at variance with the condition uniformly have been treated as nonresponsive. Thus, bidders have been allowed under no circumstances to correct errors, even unintentional ones, in their Buy America certificates after bid opening.

### II. Section 3020(b) of TEA–21

Section 3020(b) of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) amends FTA's Buy America requirements by adding to 49 U.S.C. 5323(j) the following new paragraph:

> (7) Opportunity to correct inadvertent error.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as the result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

Thus, section 3020(b) creates a limited exception to 49 CFR 661.13(b), which requires rejection of a bid that is not accompanied by a completed Buy America certificate. Pursuant to section 3020(b), FTA proposes to amend 49 CFR 661.13(b) to provide manufacturers and suppliers an opportunity to correct certifications of noncompliance or incomplete certifications that are the result of an inadvertent or clerical error. As provided in section 3020(b), manufacturers and suppliers will not be allowed to correct unsigned certificates, which must continue to be rejected as nonresponsive.

It should also be noted that section 3035 of TEA–21 provides that all buses manufactured after September 1, 1999, that are purchased with FTA funds, must conform to FTA's guidance of March 18, 1997. Because section 3035 merely sets a statutory deadline for compliance with previously issued administrative guidance on the final assembly of buses, and does not alter FTA's regulatory requirements for domestic manufacture, FTA has determined that an amendment of the Buy America regulation pursuant to section 3035 is not required.

### III. FTA's Proposed Amendment

Section 3020(b) states that a manufacturer or supplier must attest under penalty of perjury that the submission of an incorrect certification of noncompliance or an incomplete certification is the result of an inadvertent or clerical error, and that the burden of establishing inadvertent or clerical error is on the manufacturer or supplier. Consequently, FTA proposes to require that a manufacturer or supplier claiming inadvertent or clerical error submit to FTA, within 10 days after bid opening, an explanation of the circumstances surrounding the submission of the incomplete or incorrect certification of noncompliance, and an affidavit, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will simultaneously send a copy of this information to the FTA recipient. FTA may request additional information from the bidder or manufacturer, if necessary. FTA will endeavor to render a determination within 10 days of receipt of the bidder's or manufacturer's submission. Consistent with 49 CFR

section 661.15(m), which sets strict limits on contract awards during the pendency of an investigation, the proposed rule provides that the grantee may not make an award until FTA has rendered its decision, unless the grantee determines that: the items to be procured are urgently required; delivery of performance will be unduly delayed by failure to make a prompt award; or, failure to make prompt award will cause undue harm to the grantee or the Federal Government.

FTA believes that this procedure will ensure that requests to correct inadvertent and clerical errors are processed in a timely manner that will not unduly delay the award of contracts, and that is fair to both grantees and bidders. Moreover, consistent with section 3020(b), it places the burden of establishing inadvertent or clerical error on the bidder or manufacturer, who must submit evidence of and attest under oath to the occurrence of an inadvertent or clerical error.

FTA requests comment on this proposed procedure. FTA particularly seeks comment on what type of evidence of inadvertent or clerical error should be required from bidders, and what factors FTA should consider in making its determination. FTA also requests comment on whether grantees should play any role in this decision-making process.

## IV. Regulatory Impacts

*A. Regulatory Analyses and Notices*

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Because this rule merely allows the correction of inadvertent or clerical errors in Buy America certifications, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612. Because this rule does not mandate a business process change or require modifications to computer systems, its issuance will not affect a recipient's ability to respond to Year 2000 issues.

*B. Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because, based on its past experience with handling inquiries regarding inadvertent or clerical errors, FTA is anticipating only a very small number of requests for correction of Buy America certifications.

*C. Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

**List of Subjects in 49 CFR Part 661**

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

## V. Amendment of 49 CFR Part 661

Accordingly, for the reasons described in the preamble, part 661 of Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 661—[AMENDED]

1. By revising the authority citation to read as follows:

**Authority:** 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec. 337, Pub. L. 100–17, sec. 1048, Pub. L. 102–240, and sec. 3020(b), Pub. L. 105–178); 49 CFR 1.51.

2. By revising § 661.13(b) to read as follows:

**§ 661.13 Grantee responsibility.**

* * * * *

(b) The grantee shall include in its bid specification for procurement within the scope of these regulations an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with § 661.6 or § 661.12 of this part, as appropriate.

(1) A bidder or offeror who has submitted an incomplete Buy America certificate or an incorrect certificate of noncompliance through inadvertent or clerical error (but not including failure to sign the certificate), may submit to the FTA Chief Counsel within ten (10) days of bid opening a written explanation of the circumstances surrounding the submission of the incomplete or incorrect certification of noncompliance, and an affidavit, sworn under penalty of perjury, stating that the submission resulted from inadvertent or clerical error. The bidder or offeror will simultaneously send a copy of this information to the FTA grantee.

(2) The FTA Chief Counsel may request additional information from the bidder or manufacturer, if necessary. The Chief Counsel will endeavor to make a determination within ten (10) days of receipt of the bidder's or manufacturer's submission. The grantee may not make a contract award until the FTA Chief Counsel issues his/her determination, except as provided in § 661.15(m).

Issued on: February 12, 1999.

**Gordon J. Linton,**

*Administrator.*

[FR Doc. 99–3964 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–57–U

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[I.D. 020899A]**

**RIN 0648–AL42**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Compliance with Sustainable Fisheries Act Provisions for Management Plans in the South Atlantic; Comprehensive Amendment to the Fishery Management Plans of the South Atlantic Region

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of a comprehensive amendment to fishery management plans (FMPs) for the South Atlantic Region addressing certain requirements of the Sustainable Fisheries Act; request for comments.

**SUMMARY:** NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted to NMFS for review, approval, and implementation a comprehensive amendment to its FMPs that addresses the requirements of the Sustainable Fisheries Act other than those regarding essential fish habitat. Among several SFA requirements, this amendment would set criteria for determining when a fish stock is overfished and, in the case of a fishery approaching an overfished condition or that is overfished, establish measures to prevent or end overfishing and rebuild the fishery. Written comments are requested from the public.

**DATES:** Written comments must be received on or before April 19, 1999.

**ADDRESSES:** Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the comprehensive amendment, which includes an Environmental Assessment, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Assessment, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, NMFS, 727-570-5305.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*., requires each Regional Fishery Management Council to submit FMPs or amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Section 303 of the Magnuson-Stevens Act requires that the Regional Fishery Management Councils submit, by October 11, 1998, amendments to their FMPs to comply with provisions set forth in the SFA regarding the required provisions of FMPs (P. L. 104–297). These required FMP provisions include defining overfishing (and related terms such as maximum sustainable yield (MSY) and optimum yield (OY)); preventing overfishing and rebuilding overfished stocks; assessing and minimzing bycatch; assessing the effects of conservation and management measures on fishing communities, specifying data requirements for commercial, recreational, and charter fishing; assessing and minimizing fish mortality in catch-and-release recreational fisheries; and fairly and equitably allocating harvest restrictions and stock recovery benefits among commercial, recreational, and charter fisheries.

NMFS published revised national standard guidelines (63 FR 24212, May 1, 1998) to assist the Regional Fishery Management Councils in amending their FMPs to address these SFA requirements. NMFS also provided the Councils (August 1998) with technical guidance in addressing the new definition requirements of the SFA, as more generally explained in the revised national standard guidelines, for MSY, OY, overfishing, and overfished. Based on the statutory requirements of the SFA and NMFS' guidelines/guidance, the Council developed its comprehensive amendment.

The Council concluded that the definitions and word usage currently in its FMPs and implementing regulations were already consistent with SFA section 102 requirements regarding definitions. It also concluded that no action to amend existing bycatch management measures in its FMPs was required to meet the SFA requirements regarding bycatch.

Descriptions of each fishing sector and recent trends in landings are already provided in each of the Council's FMPs, and the Council determined that those descriptions and data are consistent with SFA section 108 provisions.

The comprehensive amendment contains a measure amending the existing framework procedures of the Council's FMPs. These procedures are used for making annual or periodic regulatory adjustments without requiring FMP amendments and allow the Council and NMFS to add or modify management measures in a timely manner through a streamlined rulemaking process. The proposed action would allow the Council to incorporate biomass-based stock estimates of MSY into FMPs as replacements for spawning potential ratio proxies for MSY as data become available to calculate such estimates. The comprehensive amendment's measure amending the framework procedures of the FMPs would be implemented, if approved, through regulations. In accordance with the Magnuson-Stevens Act, NMFS is evaluating a proposed rule for this measure to determine whether it is consistent with the comprehensive amendment, the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the *Federal Register* for public review and comment.

NMFS will consider comments received by April 19, 1999, whether specifically directed to the comprehensive amendment or to the proposed rule, in its decision to approve, disapprove, or partially approve the comprehensive amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the comprehensive amendment and on the proposed rule during their respective comment periods will be addressed in the final rule.

**Authority:** 16 U.S.C. 1801 *et seq*.

Dated: February 11, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–3999 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–22–F

# Notices

**Federal Register**

Vol. 64, No. 32

Thursday, February 18, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Survey of State Public and Community Nutrition Workforce

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. FNS wishes to monitor trends in education and training, work experience, areas of practice, and training needs of the public health and community nutrition workforce at the state and local government levels. A descriptive profile will assist FNS to determine the extent to which the current and future workforce has the necessary training to carry out the WIC program, for which FNS is responsible.

**DATES:** Comments on this notice must be received by April 19, 1999 to be assured of consideration.

**ADDRESSES:** Send comments and requests for copies of this proposed collection of information to Edward Herzog; Food and Nutrition Service; 3101 Park Center Drive; Room 208; Alexandria, VA 22302–1500. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. When FNS requests approval for this information collection from the Office of Management and Budget (OMB), FNS will provide OMB with all comments received. All comments will thus become public documents.

**FOR FURTHER INFORMATION CONTACT:** Edward Herzog, (703) 305–2137.

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey of State Public Health and Community Nutrition Workforce.

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* New collection of information.

*Abstract:* The Department of Agriculture's (USDA) Food and Nutrition Service (FNS) wishes to obtain information to assess the agency's efforts to recruit and retain public health and community nutritionists to staff the WIC program. Goal III, Objective 3 of the USDA/FNS Strategic Plan for 1998–2002 focuses on improving the nutritional qualifications of WIC staff. Since 1992, FNS has been involved in an initiative targeted at assisting WIC state and local agencies in recruiting and retaining qualified nutrition staff. Recruitment and retention of qualified staff is essential to maintaining the quality nutrition services by providing an environment where staff are appropriately selected, trained, and supported. Opportunities for ongoing training, job advancement, challenging role functions, and competitive salaries are important considerations in recruiting and retaining qualified nutrition staff. Workforce profile data are essential to evaluate the impact of the agency's effort to recruit and retain public health and community nutritionists. State nutrition directors use descriptive information about the community nutrition workforce in their respective states to support recruitment and retention efforts, design training programs, and advise on licensure and certification policy. According to the findings from previous workforce surveys conducted by the Association of State and Territorial Public Health Nutrition Directors, 85% of the public health and community nutrition workforce is employed in WIC programs.

This data collection will be carried out by state public health nutrition directors through their professional association—the Association of State and Territorial Public Health Nutrition Directors (ASTPHND), and will result in state-specific, as well as a national profile of the workforce. Variation in workforce characteristics by state and region will also be profiled. State nutrition directors will be responsible for coordinating data collection within their respective state including identifying appropriate respondents, distributing the questionnaire, instructing respondents on how to fill out the questionnaire, answering any questions from respondents, keeping records of responses, and entering and editing data. ASTPHND has conducted five previous surveys of the public and community nutrition workforce and the state nutrition directors have performed a similar function in the previous surveys.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 20 hours per state nutrition director in addition to an average of 15 minutes per individual respondent.

*Respondents:* There are two classes or levels of respondents: (1) The designated state public health nutrition directors and (2) persons employed in public health and community nutrition programs within states.

*Estimated Number of Respondents:* Fifty-three state and territorial public health nutrition directors will be surveyed, to include the 50 States, Puerto Rico, the Virgin Islands, and the District of Columbia. They will survey approximately 7600 nutrition workers in their respective States and territories.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* (20 hours × 53 state nutrition directors) + (7600 nutrition workers × 15 minutes) = 2960 hours.

Dated: February 8, 1999.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 99–3961 Filed 2–17–99; 8:45 am]

BILLING CODE 3410–30–U

## DEPARTMENT OF AGRICULTURE

**[Docket No. 99–007N]**

### National Advisory Committee on Microbiological Criteria for Foods

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on February 24–26, 1999 to review and discuss ongoing and completed issues on meat and poultry, fresh produce, and Codex.

**DATES:** The full committee will meet at 8:30 a.m. on February 24, 1999. On February 25, the subcommittees will meet, and the full committee will reconvene on February 26.

**ADDRESSES:** The meeting will be held at the Doubletree Hotel Park Terrace on Embassy Row, 1515 Rhode Island Avenue, NW, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Persons interested in making a presentation, submitting technical papers, or providing comments should contact Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Food Safety and Inspection Service, Department of Agriculture, Suite 6913, Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700, by mail or FAX (202) 501–7366. Comments and requests may be provided by E-mail to amelia.wright@usda.gov. Written comments may be submitted to the FSIS Docket Clerk, 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Wright by February 15, 1999.

**SUPPLEMENTARY INFORMATION:** In addition to reviewing issues regarding meat, poultry, fresh produce, and Codex, the Committee will receive new requests from the sponsoring agencies. Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science, FSIS, will be the Committee Chair.

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services on the development of microbiological safety and wholesomeness of food by assessing available data as it relates to the human health consequences of food safety. The Committee also provides guidance to the Departments of Commerce and Defense.

Done at Washington, DC, on February 11, 1999.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 99–3962 Filed 2–17–99; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### South Fork Burnt River Range Planning on the Unity Ranger District, Wallowa-Whitman National Forest, Baker County, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on five (5) livestock grazing allotments which will result in the development of new Allotment Management Plans (AMPs). The allotments are West Burnt River, North Fork Burnt River, Powell Gulch, South Burnt River and Bullrun. The allotments are located approximately 50 miles, by road, southwest of Baker City, Oregon. The allotments, combined, are called the South Fork Burnt River Range Planning Area. National Forest System lands within the Wallowa-Whitman National Forest will be considered in the proposal. Management actions are planned to be implemented beginning in the year 2000. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis should be received in writing by March 26, 1999.

**ADDRESSES:** Send written comments and suggestions concerning this proposal to Deborah G. Schmidt, District Ranger, Unity Ranger District, Wallowa-Whitman National Forest, P.O. Box 38, Unity, Oregon 97884.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and EIS to Paul Bridges, Interdisciplinary Team Leader, Wallowa-Whitman National Forest, Baker Ranger District, 3165 10th Street, Baker City, Oregon 97814, phone (541) 523–1950.

**SUPPLEMENTARY INFORMATION:** The proposed action is to continue to permit livestock grazing on National Forest System lands. The proposed action is designed to continue the improving trends in vegetation, watershed conditions, and in ecological sustainability relative to livestock grazing within the five allotments of the South Fork Burnt River Watershed. The action is needed to develop new AMPs which incorporate results of recent scientific research, analysis and documentation at the sub-basin level.

The Wallowa-Whitman Forest Plan as amended, recognized the continuing need for forage production from the Forest and recognized the five allotments of the South Fork Burnt River watershed as containing lands which are capable and suitable for grazing by domestic livestock. This action is needed to continue this historic use.

The allotments are located within the Bullrun Creek, Job Creek, East Camp Creek, Lower West Camp Creek, Upper West Camp Creek, Middle Fork Burnt River, Pole-Sheep Creeks, South Fork Burnt River, Elk Creek, North Fork Burnt River, and the West Fork Burnt River subwatersheds on the Unity Ranger District. These subwatersheds are contained within the South Fork Burnt River, North Fork Burnt River and Camp Creek Watersheds.

The Forest planning process allocated specific management direction across the Wallowa-Whitman National Forest. Within the area encompassed by the five allotments, management areas (MA) include MA1 (timber production), MA3 (wildlife/timber), MA4 (wilderness), and MA6 (backcountry).

The five allotments encompass approximately 77,000 acres of National Forest System Lands, with Bureau of Land Management (BLM) and private land making up an additional 8,100 acres within the Powell Gulch, North Fork Burnt River, and South Burnt River allotments. Important riparian areas occur in three of the allotments: Bullrun, South Burnt River and West Burnt River. Other points of interest in the allotments are as follows: in the Bullrun allotment, a portion of the Monument Rock Wilderness occurs; in the South Burnt River allotment, a multi-campground fenced exclosure occurs along the river which provides a livestock free recreation area and helps to improve riparian conditions on that portion of river; within the West Burnt River allotment, there is a Bald Eagle Management Area and many fenced exclosures exist which contribute to improving trends for many portions of the river.

The South Fork Burnt River Range Planning Area provides habitat for many wildlife species including management indicator species (MIS) and their

habitats. These MIS species include California wolverine, North American lynx, Rocky Mountain elk, marten, pileated woodpecker, goshawk, bald eagle and American peregrine falcon. Fish species within the planning area include native populations of inland redband/rainbow trout, brook trout; and other non-game species such as dace, redside shiner, and sucker.

Preliminary issues include: (1) The effects of livestock grazing on riparian conditions (including water quality, water temperature and stream bank stability; (2) the ability to maintain ecological sustainability and continue watershed restoration with continued livestock grazing; (3) the effects of no grazing or reduced grazing on the local economy; (4) the reduction in soil productivity and in amounts of native bunchgrass forage due to the encroachment of juniper trees onto rangelands; and (5) the effects of livestock grazing on TES species.

A detailed public involvement plan has been developed, and an interdisciplinary team has been selected to do the environmental analysis, prepare and accomplish scoping and public involvement activities.

The proposed action is intended to provide the analysis needed to prepare new AMPs that meet all the Forest Plan amended requirements of Inland Native Strategies for Managing Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana and Portions of Nevada (INFISH) and are consistent with the scientific findings of the Interior Columbia Basin Ecosystem Management Program (ICBEMP). Consultation with the U.S. Fish and Wildlife Service, as required by the Endangered Species Act (ESA), will be completed on all proposed activities.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be consulting with Indian Tribes and seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.
7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by September 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available March 2000.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Karyn L. Wood, Forest Supervisor for the Wallowa-Whitman National Forest. The Responsible Official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 215.

Dated: February 9, 1999.

**William R. Gast,**

*Deputy Forest Supervisor.*

[FR Doc. 99–3936 Filed 2–17–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Joseph Creek Range Planning on the Wallowa Valley Ranger District, Wallowa-Whitman National Forest, Wallowa County, Oregon

**AGENCY:** Forest Service USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on 11 livestock grazing allotments and 1 administrative horse pasture which will result in the development of new Allotment Management Plans. The grazing allotments are named Al-Cunningham, Cougar Creek, Crow Creek, Davis Creek, Fine, Hunting Camp, Swamp Creek, Table Mountain, Joseph Creek, Dobbins, and Elk Mountain and the administrative horse pasture is named Upper Chico. The allotments are located 70 miles north and east of LaGrande, Oregon. The allotments, combined, are called the Joseph Creek Range Planning Area. National Forest System lands within the Wallowa-Whitman National Forests, will be considered in the proposal. Management actions are planned to be implemented beginning in the year 2000. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis should be received in writing by March 26, 1999.

**ADDRESSES:** Send written comments and suggestions concerning this proposal to Jimmy Roberts, District Ranger, Wallowa Valley Ranger District, Wallowa-Whitman National Forest 88401 Hwy 82, Enterprise, Oregon 97828.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and EIS to Paul Bridges, Interdisciplinary Team Leader, Wallowa-Whitman National Forest Baker Ranger District, 3165 10th Street, Baker City, Oregon 97814, phone (541) 523–1950.

**SUPPLEMENTARY INFORMATION:** The proposed action is to continue to permit livestock grazing on National Forest System lands. The proposed action is designed to continue the improving trends in vegetation, watershed conditions, and ecological sustainability relative to livestock grazing within the eleven allotments and one administrative horse pasture all located in the South Joseph Creek Watershed. The action is needed to develop new Allotment Management Plans (AMPs) which incorporate results of recent scientific research, analysis and documentation at the sub-basin level.

The Wallowa-Whitman Forest Plan as amended, recognized the continuing need for forage production from the Forest and recognized the 11 allotments and 1 administrative pasture within the Joseph Creek watershed as containing lands which are capable and suitable for grazing by domestic livestock. This action is needed to continue this historic use. The allotments encompass approximately 95,555 acres of National Forest System lands in the Joseph Creek Watershed. The Range Planning Area also contains private and Bureau of Land Management (BLM) lands within its boundary.

Anadromous streams occur in all of the allotments and provide spawning and rearing habitat for Snake River Chinook salmon and Snake River summer steelhead. Chinook salmon were listed under the Endangered Species Act (ESA) in 1992, and the summer steelhead in 1997. Range management practices within the allotments have been modified to address concerns for the listed fish species and their habitat. These modifications resulted in implementation of projects designed to protect streams such as fences, new water developments to draw cattle away from riparian areas, and adjustments in season of use to protect spawning populations of steelhead.

Within the Joseph Creek Range Planning Area, Joseph Creek is designated as a Wild and Scenic River and is managed under the Forest Plan to maintain the river's outstandingly remarkable values. The range planning area is used by recreationists for numerous activities, with several campgrounds, trailheads and dispersed recreation sites receiving use. Joseph Canyon Viewpoint, an interpretive site describing significant events in Nez Perce Tribal history, is located in Joseph Creek allotment.

The Joseph Creek Range Planning Area provides habitat for many wildlife species including management indicator species (MIS) and their habitats. These MIS species include California wolverine, North American lynx, Rocky Mountain elk, marten, pileated woodpecker, goshawk, bald eagle and American peregrine falcon.

Premliminary issues include: (1) The effects of livestock grazing on riparian conditions (including water quality, water temperature and stream bank stability); (2) the ability to maintain ecological sustainability and continue watershed restoration with continued livestock grazing; (3) the effects of no grazing or reduced grazing on the local economy; and (4) the effects of livestock grazing on TES species.

A detailed public involvement plan has been developed, and an interdisciplinary team has been selected to do the environmental analysis, prepare and accomplish scoping and public involvement activities.

The proposed action is intended to provide the analysis needed to prepare new AMPs that meet all the Forest Plan amended requirements of Interim strategies for managing Pacific anadromous fish-producing watersheds in eastern Oregon and Washington, Idaho, and portions of California (PACFISH), Inland Native Strategies for Managing Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (INFISH) and are consistent with the scientific findings of the Interior Columbia Basin Ecosystem Management Program (ICBEMP). Consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, as required under the ESA, will be completed for all proposed activities.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be consulting with Indian Tribes and seeking information, comments, and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.

2. Identifying key issues to be analyzed in depth.

3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.

4. Identifying potential environmental effects of the proposals and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

5. Determining potential cooperating agencies and task assignments.

6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.

7. Developing a means of informing the public through the media and/or written material (e.g., newsletters, correspondence, etc.).

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by September 1999. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.** The final EIS is scheduled to be available March 2000.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action,

comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternative formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official is Karyn L. Wood, Forest Supervisor for the Wallowa-Whitman National Forest. The Responsible Official will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 215.

Dated: February 9, 1999.

**William R. Gast,**

*Deputy Forest Supervisor.*

[FR Doc. 99–3937 Filed 2–17–99; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Designation Amendment for Southern Illinois To Provide Official Services in the Alton, Illinois Area

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA).

**ACTION:** Notice.

**SUMMARY:** Under the United States Grain Standards Act, we have amended the designation of Southern Illinois Grain Inspection Services, Inc. (Southern Illinois), to include the former Alton, Illinois, area.

**DATES:** Effective on February 2, 1999.

**ADDRESSES:** USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Ave., S.W., Washington, DC 20250–3604.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 2, 1997, **Federal Register** (62 FR 46246), GIPSA announced the designation of Southern Illinois to provide official inspection services under the Act effective October 1, 1997, and ending September 30, 2000. Southern Illinois asked GIPSA to amend their geographic area to include the former Alton, Illinois, area, due to the purchase of the designated corporation, Alton Grain Inspection Service, Inc. (Alton).

Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate an agency to provide official services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Southern Illinois is qualified.

GIPSA announces designation of Southern Illinois to provide official inspection services under the Act, in the former Alton, Illinois, area effective February 2, 1999, and ending September 30, 2000, concurrently with the end of Southern Illinois' current designation.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the State of Illinois, is assigned to Southern Illinois.

Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to the northern Calhoun County line;

Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

Effective February 2, 1999, Southern Illinois' present geographic area is amended to include the area formerly assigned to Alton. Southern Illinois' designation to provide official inspection services ends September 30, 2000. Official services may be obtained by contacting Southern Illinois at 618–632–1921.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: February 9, 1999.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 99–3960 Filed 2–17–99; 8:45 am]

BILLING CODE 3410–EN–P

## ARMS CONTROL AND DISARMAMENT AGENCY

### The Director's Advisory Committee; Notice of Closed Meetings

February 5, 1999.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(a)(2) (1996), the U.S. Arms Control and Disarmament Agency (ACDA) announces the following Advisory Committee meetings:

*Name:* The Director's Advisory Committee (DirAC).

*Dates and Places:* February 22–23, 1999, State Department Building, 320 21st Street, NW., Room 5930, Washington, DC 20451; February 24, 1999, Ft. Leonard Wood, Missouri; March 11–12, 1999, State Department Building, 320 21st Street, NW., Room 5930, Washington, DC 20451.

*Type of Meetings:* Closed.

*Contact:* Robert Sherman, Executive Director, Director's Advisory Committee, Room 5844, Washington, DC 20451, (202) 647–4622.

*Purpose of Advisory Committee:* To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency with respect to scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

*Purpose of the Meetings:* The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Convention on Conventional Weapons. Members will also be briefed on issues regarding the Chemical and Biological

Weapons Conventions. Members will exchange information and concepts with key ACDA and Livermore Laboratory personnel. All meetings will be held in Executive Session.

*Reasons for Closing:* The DirAC members will be reviewing and discussing matters specifically authorized by Executive Order 12,958 to be kept secret in the interest of national defense and foreign policy.

*Authority to Close Meetings:* The closing of the meetings is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated February 5, 1999, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 10(d) (1996).

Notice: This notice is being published less than 15 days before the first meeting because of recent changes in the location of the meetings.

**Cathleen Lawrence,**

*Director of Administration.*

**Determination to Close Meetings of the Director's Advisory Committee**

The Director's Advisory Commission (DirAC) will hold meetings in Washington, D.C., on February 22–23 and March 11–12, and Ft. Leonard Wood, Missouri on February 24, 1999.

The entire agenda of these meetings will be devoted to specific national security policy and arms control issues. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 § 10(d)(1996), I have determined that the meetings may be closed to the public in accordance with 5 U.S.C. § 552b(c)(1). Materials to be discussed at the meetings have been properly classified and are specifically authorized under criteria established by Executive Order 12,958, 60 FR 19,825 (1995), to be kept secret in the interests of national defense and foreign policy.

This notice is being published less than 15 days before the first meeting day, because of recent changes in the location of the meetings.

John D. Holum,

*Director.*

[FR Doc. 99–4084 Filed 2–16–99; 11:06 am]

BILLING CODE 6820–32–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–301–602]**

### Certain Fresh Cut Flowers From Colombia: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia for the period March 1, 1997 through February 28, 1998.

We have preliminarily determined that sales have been made below normal value by various companies subject to this review. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** February 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3853 or (202) 482–6309, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are to the regulations codified at 19 CFR part 351 (April 1998).

#### Background

On March 11, 1998, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' with respect to the antidumping duty order on certain fresh cut flowers from Colombia (*see* 63 FR 11868). We published a notice of initiation of an administrative review of this order on April 21, 1998, in accordance with 19 CFR 351.213(b) (*see* 63 FR 19709). On September 17, 1998, pursuant to 19 CFR 351.213(d)(1), we rescinded the administrative review with respect to ten groups of producers and exporters of the subject merchandise based on withdrawals of the requests for review by the interested parties (*see* 63 FR 49686). The cash deposit rates for these companies will continue to be the rates established for them in the most recently completed final results. On December 7, 1998, we extended the deadline for these preliminary results until February 10, 1999, in accordance with section 751(a)(3)(A) of the Act (*see* 63 FR 67454). From December 8–18, 1998, we verified the responses of four respondents: Falcon Farms de Colombia S.A. (''Falcon Farms''), Flores de la Vega Ltda. (''Vegaflor''), Flores de Serrezuela S.A. (''Serrezuela''), and Flores Silvestres S.A. (''Silvestres''). The Department has conducted this administrative review in accordance with section 751 of the Act.

#### Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums, and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope remains dispositive.

#### Period of Review

The period of review (''POR'') is March 1, 1997 through February 28, 1998.

#### Respondent Selection

Section 777A(c)(2) of the Act provides the Department with the authority to determine margins by limiting its examination to a statistically valid sample of exporters, or exporters accounting for the largest volume of the subject merchandise that can reasonably be examined. This subparagraph is formulated as an exception to the general requirement of the Act that each company for which a review is requested will be individually examined and receive a calculated margin. In this

administrative review, over 400 companies were either named in the initiation notice or have been identified as being affiliated with a company named in the initiation notice.

Because of the large number of companies involved in the review and the limited resources available to the Department, we determined that it was administratively necessary to restrict the number of respondents selected for examination. This enabled the Department to conduct thorough and accurate analyses of the responses to our questionnaires and other relevant issues within the statutory deadlines. Restricting the number of respondents for examination is consistent with the two most recent administrative reviews of this order and other past cases involving large numbers of potential respondents, statutory deadlines, and limited resources. *See, e.g., Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Termination of Antidumping Duty Administrative Review,* 63 FR 5354 (February 2, 1998) *(''Flowers Tenth Review (Preliminary)''); Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 62 FR 16772 (April 8, 1997) *(''Flowers Ninth Review (Preliminary)''); Preliminary Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190 (October 10, 1996); and *Preliminary Determination of Sales at Less Than Fair Value: Pasta from Italy,* 61 FR 1344 (January 19, 1996).

The Department limited its examination in the present review to seven exporters and producers as permitted under section 777A(c)(2)(B) of the Act. Of the exporters and producers subject to requests for review, these seven accounted for the largest volume of exports to the United States during the POR. The respondents in this review are: the Caicedo Group (''Caicedo''), Falcon Farms, Flores Colon Ltda. (''Flores Colon''), the Maxima Farms Group (''Maxima''), Serrezuela, Silvestres, and Vegaflor.

**Non-Selected Respondents**

Consistent with our practice in *Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Review,* 63 FR 31724 (June 10, 1998) *(Flowers Tenth Review),* we have assigned the non-selected respondents a weighted-average margin based on the calculated margins of selected respondents, excluding any *de minimis* margins and margins based on facts available. The firms in question are listed under ''Non-Selected Respondents'' in the *Preliminary Results of Review* section below.

**Verification**

In accordance with 19 CFR 351.307(b)(v), we verified information provided by those respondents that had not been verified in the last two administrative reviews and for whom the petitioner requested verification (*see Background* section above for a list of verified companies). We verified information using standard verification procedures, including on-site examination of relevant sales and financial records, and inspection of original documentation containing relevant information.

**Duty Absorption**

On March 31, 1998, the petitioner requested that the Department determine whether antidumping duties had been absorbed by respondents during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine, during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order, if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. Section 751(a)(4) was added to the Act by the URAA. 19 CFR 351.213(j) addresses duty absorption.

For transition orders as defined in section 751(c)(6)(C) of the Act, *i.e.*, orders in effect as of January 1, 1995, 19 CFR 351.213(j)(2) provides that the Department will make a duty absorption determination, if requested, for any administrative review initiated in 1996 or 1998. The preamble to the proposed regulations explains that reviews initiated in 1996 will be considered initiated in the second year and reviews initiated in 1998 will be considered initiated in the fourth year. *See* 61 FR 7308, 7317 (February 27, 1996). *See also* 62 FR at 27318 (May 19, 1997). This approach assures that interested parties will have the opportunity to request a duty absorption determination on entries for which the second and fourth years following an order have already passed, prior to the time for sunset review of the order under section 751(c) of the Act. Because the order on certain fresh cut flowers from Colombia has been in effect since 1986, this is a transition order. Consequently, based on the policy stated above, it is appropriate for the Department to examine duty absorption in this eleventh review, which was initiated in 1998.

Section 751(a)(4) of the Act provides that duty absorption may occur if the subject merchandise is sold in the United States through an affiliated importer. Of the selected respondents, the following have affiliated importers: Caicedo, Falcon Farms, Maxima, and Vegaflor. Furthermore, we have preliminarily determined that there are dumping margins for the following companies with respect to the percentages of their U.S. sales by quantity indicated below:

| Name of company | Percentage of U.S. affiliated importer sales with margin |
|---|---|
| Caicedo | 2.66 |
| Falcon Farms | 32.47 |

We presume that the duties will be absorbed for those sales which were dumped, unless there is evidence (*e.g.*, an agreement between the affiliated importer and the unaffiliated purchaser) that the unaffiliated purchaser in the United States will pay the full duty ultimately assessed on the subject merchandise. In the present review, none of the selected respondents has provided evidence of agreements with unaffiliated purchasers to pay ultimately assessed antidumping duties. Therefore, we preliminarily find that the antidumping duties have been absorbed by the above-listed firms on the percentage of U.S. sales indicated.

**Fair Value Comparisons**

*United States Price*

As permitted by section 777A(d)(2) of the Act, we have preliminarily determined that it is appropriate to average U.S. prices on a monthly basis in order to (1) use actual price information (which is often available only on a monthly basis), and (2) account for perishable product pricing practices. The Department used this same averaging technique in *Flowers Tenth Review,* and prior reviews of this order.

For the price to the United States, we used export price (''EP'') or constructed export price (''CEP'') as defined in sections 772(a) and 772(b) of the Act, as appropriate. CEP was used for consignment sales through unaffiliated U.S. consignees and sales (consignment or otherwise) made through affiliated importers.

We calculated EP based on the packed price, consisting of invoice price plus certain additional charges (*e.g.*, box charges, fuel surcharges, and antidumping duty surcharge), to the first unaffiliated purchaser in the United

States. We made deductions, where appropriate, for discounts and rebates, foreign inland freight, international (air) freight, brokerage and handling, U.S. customs fees, and return credits.

For sales made on consignment, CEP was calculated based on the packed price consisting of invoice price plus certain additional charges by the consignee (*e.g.*, box charges, fuel surcharges, and antidumping duty surcharge) to the unaffiliated purchaser. For sales made through affiliated parties, CEP was based on the packed price, consisting of invoice price plus certain additional charges (*e.g.*, box charges, fuel surcharges, and antidumping duty surcharge), to the first unaffiliated customer in the United States. We made adjustments to these prices, where appropriate, for discounts and rebates, foreign inland freight, international (air) freight, freight charges incurred in the United States, brokerage and handling, U.S. customs fees, direct selling expenses relating to commercial activity in the United States (*i.e.*, credit expenses and contributions to the Colombian Flower Council), return credits, royalties, and indirect selling expenses incurred in the home market that related to commercial activity in the United States. Finally, consistent with our practice in the *Flowers Tenth Review*, we made adjustments for either commissions paid to unrelated U.S. consignees or the direct and indirect U.S. selling expenses of related consignees.

Pursuant to sections 772(d)(3) and 772(f) of the Act, the price was further reduced by an amount for profit to arrive at the CEP for sales made through affiliated parties. The CEP profit was calculated in accordance with section 772(f) of the Act.

*Normal Value*

Section 773 of the Act provides that the normal value (''NV'') of the subject merchandise shall be (1) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market sales), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, (2) the price at which the foreign like product is sold (or offered for sale) for consumption in a country other than the exporting country or the United States (third country sales), or (3) the constructed value of that merchandise.

During the POR, none of the companies selected to respond in this review had sales in the home market exceeding five percent of the sales to the U.S. market, *i.e.*, none had a viable home market. Section 773(a)(4) of the Act states that if the administering authority determines that the NV of the subject merchandise cannot be determined using home market prices, then, notwithstanding the possible use of third country prices, the NV of the subject merchandise may be the constructed value (''CV'') of that merchandise.

During this POR, certain companies selected to respond had viable third country markets in Europe and Canada. In prior reviews, we have rejected using prices to Europe because the particular market situation prevents a proper comparison. *See Flowers Tenth Review* at 31725. Information submitted by respondents shows that this market situation has continued. Therefore, we are not basing NV on sales to European markets.

With respect to Canada, only one selected respondent had a viable third country market. Because this is not a significant export market for Colombia, we have determined that, under the facts of this case, prices to Canada are not representative within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. As discussed in the *Respondent Selection* section above, we have limited our analysis to a subset of the Colombian companies exporting the subject merchandise to the United States and we are basing the antidumping duty assessments for the non-selected companies on the margins calculated for the selected companies. Given this, we want to make our analysis as representative as possible of the companies that were not selected to respond to our questionnaire.

It is clear that Canada is not an important export market for Colombian flower growers. Evidence on the record indicates that Canada represents less than three percent of flower exports from Colombia. Thus, to use sales to Canada as the basis of our margin calculations for the single exporter that has a viable market in Canada and then include those results in calculating the rate used for assessing duties on the non-selected respondents' imports would be inappropriate for the vast majority of growers. Furthermore, all interested parties in this review agree that sales to Canada should not be used as a basis for NV. *See* Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, Import Administration ''Canadian Sales,'' dated February 10, 1999, on file in the Central Records Unit of the Department of Commerce. Therefore, in accordance with section 773(a)(4) of the Act, we are basing NV on CV.

We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, and the selling, general and administrative expenses reported by respondents. Consistent with the methodology used in the *Flowers Tenth Review*, we first converted costs incurred in each month from pesos to dollars using the corresponding month's exchange rate. *See Flowers Tenth Review (Preliminary)* at 5357 (explaining the Department's methodology). We totaled the monthly cost expressed in dollars over the POR and divided by the quantity of export quality flowers sold by the producer to arrive at the per-stem CV in U.S. dollars. The dollar per-stem CV was then converted to pesos using the period-end exchange rate and then deflated each month to account for fluctuations in the value of the Colombian peso during the POR. Next, we converted the peso per-stem CV based on the date of the U.S. sale, in accordance with section 773A(a) of the Act.

We consider non-export quality flowers (culls) that are produced in conjunction with export quality flowers to be by-products. Therefore, revenue from the sales of culls was offset against the cost of producing the export quality flowers.

We based selling, general and administrative expenses on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product for consumption in the home market. Where the respondents had no home market sales, we used as general and administrative expenses the expenses associated with the respondents' sales to all other markets. With respect to selling expenses, all respondents reporting sales of export quality flowers in the home market reported no selling expenses. Therefore, we included zero as the actual amount of selling expenses incurred and realized by the exporters and producers being examined in this review.

With respect to profit, we preliminarily determine that the conditions that led to the use of facts available for the profit rate in the *Flowers Ninth Review* and the *Flowers Tenth Review* continue to exist in the current POR. We find that home market sales of culls and export quality flowers were outside the ordinary course of trade. Consequently, we are unable to apply the methods specified in section 773(e)(2)(A) or 773(e)(2)(B)(ii) of the Act for calculating profit. Also, none of the respondents realized a profit on

merchandise in the same general category as flowers produced for sale in Colombia. Therefore, we are also not able to apply the profit methodology described in section 773(e)(2)(B)(i) of the Act.

Section 773(e)(2)(B)(iii) permits the Department to use ''any other reasonable method'' to compute an amount for profit, provided that the amount ''may not exceed the amount normally realized by exporters or producers * * * in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise.'' Despite our efforts, we have not been able to find any information on the profits earned in Colombia by producers of merchandise that is in the same general category of products as flowers. Therefore, we cannot determine a ''profit cap'' as described in section 773(e)(2)(B)(iii) of the Act. Consistent with our practice in *Flowers Ninth Review* and *Flowers Tenth Review*, we have applied section 773(e)(2)(B)(iii) of the Act on the basis of facts available and have developed a profit figure from the financial statements of a Colombian producer of agricultural and processed agricultural goods. *See* Statement of Administrative Action (''SAA'') at 841. We preliminarily determine that it is appropriate to use the profit rate for that company, 2.87 percent of cost of production, for all respondents. *See* Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, Import Administration ''Calculation of Constructed Value Profit,'' dated February 10, 1999, on file in the Central Records Unit of the Department of Commerce.

We added U.S. packing to CV. In addition, for EP sales, we made circumstance of sale adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act.

**Currency Conversion**

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See Notice of Final Determination of Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

**Preliminary Results of Review**

As a result of our comparison of EP and CEP with NV, we preliminarily determine that there are margins in the amounts listed below for the period March 1, 1997 through February 28, 1998.

*Selected Respondents*

The following seven firms and groups of firms (composed of 19 companies) were selected as respondents and received individual rates, as indicated below:

| | Percent |
|---|---|
| Caicedo Group | 1.06 |
| Agrobosques S.A. | |
| Andalucia S.A. | |
| Aranjuez S.A | |
| Exportaciones Bochica S.A. | |
| Floral Ltda. | |
| Flores del Cauca S.A. | |
| Productos el Rosal S.A. | |
| Productos el Zorro S.A. | |
| Falcon Farms de Colombia S.A. | 3.31 |
| Flores Colon Ltda | 1.87 |
| Flores de la Vega (Vegaflor) | 0.07 |
| Flores de Serrezuela S.A. | 1.82 |
| Flores Silvestres S.A. | 2.36 |
| Maxima Farms Group | 0.34 |
| Agricola Los Arboles S.A. | |
| C.I. Maxima Floral Traders S.A. | |
| Colombian D.C. Flowers | |
| Maxima Farms Inc. | |
| Polo Flowers S.A. | |
| Rainbow Flowers S.A. | |

*Non-Selected Respondents*

The following companies were not selected as respondents and will receive a rate of 1.83 percent:

Abaco Tulipanex de Colombia
Achalay
Aga Group
  Agricola la Celestina
  Agricola la Maria
Agrex de Oriente
Agricola Acevedo
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Benilda Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil
Agricola Guali S.A.
Agricola la Corsaria C.I. Ltda.
Agricola la Siberia
Agricola Las Cuadras Group
  Agricola Las Cuadras Ltda.
  Flores de Hacaritama
Agricola los Gaques Ltda.
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agroindustrial Don Eusebio Ltda. Group
  Agroindustrial Don Eusebio Ltda.
  Celia Flowers
  Passion Flowers
  Primo Flowers
  Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuaria Cuernavaca Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andes Group
  Cultivos Buenavista Ltda.
  Flores de los Andes Ltda.
  Flores Horizonte Ltda.
  Inversiones Peñas Blancas Ltda
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
  Agricola Bojaca
  Flores del Neusa Nove Ltda.
  Flores y Plantas Tropicales
  Tropiflora
  Universal Flowers
Cantarrana Group
  Agricola los Venados Ltda.
  Cantarrana Ltda.
Carcol Ltda.
Cigarral Group
Flores Cigarral
  Flores Tayrona
Classic
Claveles de los Alpes Ltda.
Clavelez
Coexflor
Colibri Flowers Ltda.
Color Explosion
Combiflor
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.

Degaflor
De La Pava Guevara e Hijos Ltda.
Del Monte
Del Rio Group
  Agricola Cardenal S.A.
  Flores del Rio S.A.
  Indigo S.A.
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
El Dorado
Elite Flowers (The Elite Flower/Rosen Tantau)
El Jardin Group
  Agricola el Jardin Ltda.
  La Marotte S.A.
  Orquideas Acatayma Ltda.
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
  Envy Farms
  Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exporosas
Exportadora
Farm Fresh Flowers Group
  Agricola de la Fontana
  Flores de Hunza
  Flores Tibati
  Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Bellisima
Flora Intercontinental
Floralex Ltda..
Florandia Herrera Camacho y Cia.
Floreales Group
Floreales Ltda.
Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Ainsuca Ltda.
Flores Ainsus
Flores Alcala Ltda.
Flores Andinas
Flores Aurora
Flores Bachue Ltda.
Flores Calichana
Flores Carmel S.A.
Flores Cerezangos
Flores Comercial Bellavista Ltda.
Flores Corola
Flores de Aposentos Ltda.
Flores de Guasca
Flores de Iztari
Flores de Memecon/Corinto
Flores de la Cuesta
Flores de la Hacienda
Flores de la Maria
Flores de la Montana
Flores de la Parcelita
Flores de la Sabana Group
  Flores de la Sabana S.A.
  Roselandia S.A.
Flores de la Vereda
Flores del Campo Ltda.
Flores del Cielo Ltda.
Flores del Cortijo
Flores del Lago Ltda.
Flores del Tambo
Flores de Oriente
Flores de Suba
Flores de Suesca Group
  Flores de Suesca S.A.
  Toto Flowers
Flores de Tenjo Ltda.
Flores Depina Ltda.
Flores el Lobo
Flores el Molino S.A.
Flores el Puente Ltda.
Flores el Rosal Ltda
Flores el Talle Ltda.
Flores el Zorro Ltda
Flores Flamingo Ltda.
Flores Fusu
Flores Galia Ltda.
Flores Gicor Group
  Flores Cicor Ltda.
  Flores de Colombia
Flores Gloria
Flores Hacienda Bejucol
Flores Juanambu Ltda.
Flores Juncalito Ltda.
Flores la Cabanuela
Flores la Fragancia S.A.
Flores la Gioconda
Flores la Lucerna
Flores la Macarena
Flores la Pampa
Flores la Union/Gomez Arango & Cia. Group
Flores la Union/Santana
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales Group
  Flores Tropicales Ltda.
  Mercedes S.A.
  Rosas Colombianas Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Floricola la Gaitana S.A.
Floricola la Ramada Ltda.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Floval
Flower Factory
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Garden and Flowers Ltda.
German Ocampo
Granja
Green Flowers
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
  Flores Hana Ichi de Colombia Ltda.
  Flores Tokai Hisa
Hernando Monroy
Hill Crest Gardens
Horticultura de la Sasan
Horticultura el Molino
Horticultura Montecarlo
Illusion Flowers
Industria Santa Clara
Industrial Agricola
Industrial Terwengel Ltda.
Ingro Ltda.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones & Producciones Tecnica
Inversiones Santa Rita Ltda.
Inversiones Santa Rosa ARW Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines de America
Jardines de Timana
Jardines Natalia Ltda.
Jardines Tocarema
J.M. Torres
Karla Flowers

Kingdom S.A.
La Colina
La Conchita Group
  Agropecuaria La Monja
  Cienfuegos
  C.I. Flores Santillana Ltda.
  Flores la Conchita
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
  La Fleurette de Colombia Ltda.
  Las Amalias S.A.
  Pompones Ltda.
  Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Merastec
Monteverde Ltda.
Morcoto
Nasino
Natuflora/San Martin Bloque B Ltda.
Olga Rincon
Oro Verde Group
  Inversiones Miraflores S.A.
  Inversiones Oro Verde S.A.
Otono
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas S.A.
Prismaflor
Propagar Plantas S.A.
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
  Agricola la Capilla
  Flores la Colmena Ltda.
  Inversiones la Serena
  Rosas Sabanilla Ltda.
Rosas y Jardines
Rose
Rosex Ltda.
San Ernesto
San Valentine
Sansa Flowers
Santana Flowers Group
  Hacienda Curibital Ltda.
  Inversiones Istra Ltda.
  Santana Flowers Ltda.
Santa Rosa Group
  Flores Santa Rosa Ltda.
  Floricola la Ramada Ltda.
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
  Agricola el Mortino Ltda.
  Flores Aguaclara Ltda.
  Flores del Monte Ltda.
  Flores la Estancia
  Jaramillo y Daza
Solor Flores Ltda.
Starlight
Sunbelt Florals
Superflora Ltda.
Susca
Sweet Farms
Tag Ltda.
The Beall Company
The Rose
Tikiya Flowers
Tinzuque Group
  Catu S.A.
  Tinzuque Ltda
Tomino
Tropical Garden
Tuchany Group
  Flores Munya
  Flores Sibate
  Flores Tikaya
  Tuchany S.A.
Uniflor Ltda.
Velez de Monchaux Group
  Agroteusa
  Velez De Monchaux e Hijos y Cia S. en C.
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

Parties to the proceeding may request disclosure within five days of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue; and (2) a brief summary of the argument. All memoranda referred to in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the quantity of subject merchandise entered during the POR. We have used the number of stems entered during the POR, rather than entered values, because respondents reported average monthly prices and, moreover, the entered values were not associated with particular importers. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review, except that no cash deposit will be required if the rate is *de minimis, i.e.*, less than 0.5 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 3.10 percent, the adjusted ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this

review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 10, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–4012 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–559–001]**

### Certain Refrigeration Compressors From the Republic of Singapore; Notice of Rescission of Countervailing Duty Suspension Agreement Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of suspension agreement administrative review.

**SUMMARY:** On December 23, 1998 the Department of Commerce (the Department) initiated the fifteenth administrative review of the countervailing duty suspension agreement on certain refrigeration compressors from the Republic of Singapore. The period of review was April 1, 1997, through March 31, 1998. The initiation was in response to a request made on November 30, 1998, by the Government of the Republic of Singapore (the GOS), Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), an exporter of subject merchandise, and Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), a producer of subject merchandise. This review has now been rescinded as a result of the withdrawal of the request for administrative review by the GOS, AMS and MARIS, as no other interested party has requested a review.

**EFFECTIVE DATE:** February 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey or Rick Johnson, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0413 and (202) 482–3818, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 7, 1983, the Department published in the **Federal Register** a notice announcing the suspension of the countervailing duty investigation on refrigeration compressors from the Republic of Singapore (48 FR 51167).

On November 30, 1998, the GOS, AMS, and MARIS, requested an administrative review of the suspension agreement on certain refrigeration compressors from Singapore. In accordance with 19 CFR 351.221(b), we initiated the review on December 23, 1998 (63 FR 71091) covering the period of April 1, 1997, through March 31, 1998. On January 5, 1999, the GOS, AMS, and MARIS withdrew their request for an administrative review of the suspension agreement.

#### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will allow a party that requests an administrative review to withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. Therefore, because the GOS, AMS, and MARIS have timely withdrawn their requests for review, the Department is rescinding this review. This rescission of administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d).

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: February 5, 1999.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, Enforcement Group III.*

[FR Doc. 99–4011 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020999D]**

### Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee will hold meetings.

**DATES:** The meetings will be held on March 29–31, 1999.

**ADDRESSES:** All meetings will be held at the Villa Parguera Hotel, 304 St., Km. 3.3, La Parguera, Lajas, PR.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Council will hold its 97th regular public meeting to discuss the items contained in the following agenda:

Conflict of Interest Presentation
Essential Fish Habitat
-Council Comments on Projects that might affect Essential Fish Habitat
Coral Fishery Management Plan (FMP)
-Update on Marine Conservation District
- Report of Scientific and Statistical Committee Meeting
Reef Fish FMP
-Update
-Overfishing Definition based on Maximum Sustainable Yield
-Banning SCUBA-Gillnets-Traps
-Trap Reduction Program - Fact Finding Meetings Schedule
Queen Conch FMP
-Update
-Report on Belize Meeting
Coastal Pelagics FMP
-Dolphin Fish and Other Pelagic Species - Update
Enforcement
-Federal Government
-Puerto Rico
-U.S. Virgin Islands
Administrative Committee Recommendations
Meetings Attended by Council Members and Staff
Other Business
Next Council Meeting

The Council will convene on Tuesday March 30, 1999, from 9:00 a.m. to 5:00

p.m., through Wednesday March 31, 1999, from 9:00 a.m. untill noon., approximately.

The Administrative Committee will meet on Monday, March 29, 1999, from 2:00 p.m. to 5:00 p.m., to discuss administrative matters regarding Council operation.

The meetings are open to the public, and will be conducted in English. However, simultaneous interpretation (Spanish-English) will be available during the Council meeting (March 30–31, 1999). Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

### Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, PR 00918–2577, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: February 11, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–4001 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 020899C]**

### Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

**DATES:** The Council and its advisory entities will meet during March 8–12, 1999. The Council meeting will begin on Tuesday, March 9, at 8 a.m., reconvening each day through Friday. The Council will meet as late as necessary each day to complete its scheduled business.

**ADDRESSES:** The meetings will be held at the Columbia River DoubleTree Hotel, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Lawrence D. Six, Executive Director; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order
1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve November 1998 Meeting Minutes
4. Review of Recusal Rule

B. Salmon Management
1. Review of 1998 Fisheries and Summary of 1999 Stock Abundance Estimates
2. Estimation Procedures and Methodologies
3. Experimental Fisheries in April 1999
4. Preliminary Definition of 1999 Management Options
5. Adoption of 1999 Management Options for Analysis
6. Plan Amendments, Including Essential Fish Habitat
7. Non-Retention Mortality
8. Adopt 1999 Options for Public Review
9. Schedule of Public Hearings and Appointment of Hearing Officers

C. Habitat Issues

D. Marine Reserve Issues

E. Pacific Halibut Management
1. Implementation of Council Recommendations for 1999
2. Results of the International Pacific Halibut Commission Annual Meeting
3. Status of Estimate of Area 2A Bycatch
4. Proposed Incidental Catch in the Troll Salmon Fishery for 1999

F. Groundfish Management
1. Status of Federal Regulations and Activities
2. Clarification of 1999 Measures and Review of Inseason Management Process for 1999 and Open Access Trip Limits
3. Final Harvest Limits and Treaty Set-Aside for Pacific Whiting in 1999
4. Consistency of California Rockfish Size Limits with Fishery Management Plan
5. Mandatory Observer Coverage for At-Sea Processors
6. Exempted Fishing Permits

G. Highly Migratory Species Management - Status of International Management Discussions and Coordinated Council Management

H. Administrative and Other Matters
1. Report of the Budget Committee
2. Legislative Update
3. Process for Development of Strategic Plan
4. Appointments to Advisory Entities
5. Revisions to Statement of Organization, Practices, and Procedures and Council Operating Procedures
6. Report to Congress on West Coast Seals and Sea Lions
7. Status of Research and Data Collection Needs
8. Approve April 1999 Agenda
9. Report of Council Chairs Meeting

### Advisory Meetings

The Habitat Steering Group meets at 10 a.m. on Monday, March 8, to address issues and actions affecting habitat of fish species managed by the Council.

The Scientific and Statistical Committee will convene on Monday, March 8, at 11 a.m. and on Tuesday, March 9, at 8 a.m. to address scientific issues on the Council agenda.

The Salmon Technical Team will meet as necessary Monday through Friday March 8–12 to address salmon management items on the Council agenda.

The Salmon Advisory Subpanel will convene on Monday, March 8, at 9 a.m. and will continue to meet throughout the week as necessary to address salmon management items on the Council.

The Ad-Hoc Marine Reserve Committee will meet on Monday, March 8, at 4 p.m. to begin discussing the feasibility of marine reserves as a management tool.

The Ad-Hoc Legal Gear Committee will meet on Monday, March 8 at 7 p.m. and on Tuesday, March 9 at 8 a.m. to discuss changes to groundfish legal gear specifications to reduce discard.

The Budget Committee meets on Monday, March 8 at 1 p.m. to review the status of the 1999 Council budget.

The Enforcement Consultants meet at 7 p.m. on Tuesday, March 9, to address enforcement issues relating to Council agenda items.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 11, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–4000 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 020999E]**

## Western Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council will hold a meeting of its Precious Corals Plan Team.

**DATES:** The meeting will be held on March 9, 1999, from 1:00 p.m. to 4:00 p.m.

**ADDRESSES:** The meeting will be held at NMFS Laboratory, 2570 Dole Street, Room 112, Honolulu, HI; telephone: 808–983–5300.

*Council address*: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

**SUPPLEMENTARY INFORMATION:** The Precious Corals Plan Team will discuss possible adjustments in established management measures, including modifying the harvest quota for gold coral, implementing a minimum size limit for black coral, applying the size limit for pink coral to all established and conditional beds, restricting the areas where the use of non-selective gear is allowed, designating the newly discovered bed near French Frigate Shoals as a conditional bed and revising data reporting requirements.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 11, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–3998 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 090198A]**

## Recreational Fishing; Code of Angling Ethics

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Final Code of Angling Ethics

**SUMMARY:** NMFS is adopting this Code of Angling Ethics to implement the public education strategy required under the

NMFS-specific Recreational Fishery Resources Conservation Plan.

**DATES:** Effective March 22, 1999.

**ADDRESSES:** Copies of the final Code of Angling Ethics are available from Richard H. Schaefer; Chief, Office of Intergovernmental and Recreational Fisheries; 8484 Georgia Avenue, Suite 425; Silver Spring, Maryland 20910–3282.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, 301-427-2014.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 7, 1995, the President signed Executive Order 12962 (EO) - Recreational Fisheries. The EO recognized the social, cultural, and economic importance of recreational fishing to the nation and directed Federal agencies to ''improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities.'' Further, the EO established the National Recreational Fisheries Coordination Council (NRFCC) consisting of Secretarial designees from the Departments of Commerce, Interior, Agriculture, Defense, Energy, and Transportation, and the Environmental Protection Agency. The NRFCC was directed under the EO to produce a Recreational Fishery Resources Conservation Plan (National Plan). The National Plan, completed June 3, 1996, directed each Federal agency to develop an agency-specific implementation plan that identifies actions needed to meet the goals and objectives of the National Plan. The NMFS-specific Recreational Fishery Resources Conservation Plan, unveiled December 31, 1996, dictates four Implementation Strategies as policy to achieve the goals of the National Plan. Implementation Strategy III, Public Education, states that NMFS will support, develop, and implement programs designed to enhance public awareness and understanding of marine conservation issues relevant to the well-being of marine recreational fishing. One output listed under this Implementation Strategy is ''NMFS will develop, promote and distribute a ''Code of Conduct for Recreational Fishing''.''

On October 5, 1998, a notice of proposed code of angling ethics (63 FR 53353) was published in the **Federal Register**.

The three comments received are addressed as follows:

**Comments and Responses**

*Comment 1*: One commenter asked that the proposed Code of Angling Ethics be expanded to include an enforcement ethic that would encourage anglers to confront individuals not conforming to the Code of Ethical Angling and identify and report illegal activities.

*Response:* The intent of the proposed Code is to succinctly describe ethical conduct for the angler. Although NMFS concurs with the public's involvement and responsibility suggested by the commenter, such enforcement issues are outside of the intent of the Code of Angling Ethics.

*Comment 2*: One commenter, while supporting the proposed Code as written, resented the Government proposing anything to guide the personal behavior of anglers.

*Response:* The Code is intended to inform the angling public of NMFS's views regarding what constitutes ethical angling behavior. The guidelines are discretionary, not mandatory.

*Comment 3*: An association of anglers stated that they fully supported the draft

Code of Ethical Angling and asked NMFS to simultaneously address corrective habitat matters with sportfishing regulations.

*Response:* The Sustainable Fisheries Act of 1996 requires the identification of essential fish habitat in federal fishery management plans.

The following Code of Angling Ethics has been adopted by NMFS:

THE CODE OF ANGLING ETHICS

1. Promotes, through education and practice, ethical behavior in the use of aquatic resources.

2. Values and respects the aquatic environment and all living things in it.

3. Avoids spilling, and never dumps, any pollutants, such as gasoline and oil, into the aquatic environment.

4. Disposes of all trash, including worn-out lines, leaders, and hooks, in appropriate containers, and helps to keep fishing sites litter-free.

5. Takes all precautionary measures necessary to prevent the spread of exotic plants and animals, including live baitfish, into non-native habitats.

6. Learns and obeys angling and boating regulations, and treats other anglers, boaters, and property owners with courtesy and respect.

7. Respects property rights, and never trespasses on private lands or waters.

8. Keeps no more fish than needed for consumption, and never wastefully discards fish that are retained.

9. Practices conservation by carefully handling and releasing alive all fish that are unwanted or prohibited by regulation, as well as other animals that may become hooked or entangled accidentally.

10. Uses tackle and techniques which minimize harm to fish when engaging in ''catch and release'' angling.

Dated: February 11, 1999.

**Andrew A. Rosenberg, Ph.D.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–4002 Filed 2–17–99; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT:** 64 F.R. 6327.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m., Wednesday, February 24, 1999.

**CHANGES IN THE MEETING:** The Commodity Futures Trading Commission has changed the meeting to discuss Enforcement Matters to Wednesday, March 3, 1999 at 2:00 p.m.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 418–5100.

**Catherine D. Dixon,**

*Assistant Secretary of the Commission.*

[FR Doc. 99–4085 Filed 2–16–99; 10:36 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Secretarial Authorization for Certain Members of the Department of the Navy To Serve on the Board of Directors, Navy-Marine Corps Relief Society

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** In accordance with 10 U.S.C. 1033, the Secretary of the Navy has authorized certain members of the Navy and Marine Corps to serve, without compensation, on the Board of Directors for the Navy-Marine Corps Relief Society. Officials so authorized, along with the name of the current incumbent to each such position, are as follows:

Chief of Naval Operations, Admiral J.L. Johnson, USN; Commandant of the Marine Corps, General C.C. Krulak, USMC; Chief of Naval Personnel, Vice Admiral D.T. Oliver, USN; Deputy Chief of Staff for Manpower and Reserve Affairs, Headquarters Marine Corps, Lieutenant General J.W. Klimp, USMC; Surgeon General of the Navy, Vice Admiral R.A. Nelson, MC, USN; Commander Naval Supply Systems, Rear Admiral D.E. Hickman, SC, USN; Chief of Chaplains, Rear Admiral B. Holderby, CHC, USN; Judge Advocate General, Rear Admiral J.D. Hutson, JAGC, USN; Master Chief Petty Officer of the Navy, Master Chief J.L. Herdt, USN; Sergeant Major of the Marine Corps, Sergeant Major L.G. Lee, USMC.

Authorization to serve on the Board of Directors has been made for the purpose of providing oversight and advice to, and coordination with, the Navy-Marine Corps Relief Society. Participation of the above officials in the activities of the Society will not extend to participation in day-to-day operations.

**FOR FURTHER INFORMATION CONTACT:** Commander Mike Quinn, Office of the Judge Advocate General, Administrative Law Division, (703) 604–8228.

(Authority: 10 U.S.C. 1033(c))

Dated: February 4, 1999.

**Ralph W. Corey,**

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## DEPARTMENT OF ENERGY

### Second Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site

**AGENCY:** Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** The Department of Energy (DOE) is issuing a Second Record of Decision for processing certain categories of plutonium residues for disposal or other disposition as specified in the Preferred Alternative contained in the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (the Final EIS, DOE/EIS–0277F, August 1998). The material categories covered by this Record of Decision are: (1) Incinerator ash residues, (2) Graphite fines residues, (3) Inorganic ash residues, (4) Molten salt extraction/electrorefining salt residues, (5) Direct oxide reduction salt residues (high plutonium concentration), (6) High-efficiency particulate air filter media residues, and (7) Sludge residues.

**ADDRESSES:** Copies of the Final EIS, the first Record of Decision, and this Second Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** Notice that announced the availability of the Final EIS (63 FR 46006, August 28, 1998), or by calling the Center for Environmental Management Information at 1–800–736–3282 (toll free) or 202–863–5084 (in Washington, DC).

**FOR FURTHER INFORMATION CONTACT:** For information on the management of plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site, contact: Ms. Patty Bubar, Acting Director, Rocky Flats Office (EM–64), Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 301–903–7130.

For information concerning the Final EIS or either Record of Decision, contact: Mr. Charles R. Head, Senior Technical Advisor, Office of Nuclear Material and Facility Stabilization (EM–60), Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–5151.

For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone: 202–586–4600, or leave a message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

## I. Synopsis of the Decision

The U.S. Department of Energy (DOE) announced issuance of the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (Final EIS, DOE/EIS–0277F) on August 28, 1998 (63 FR 46006, August 28, 1998). In the Final EIS, DOE considered the potential environmental impacts of a proposed action to process certain plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site (Rocky Flats) near Golden, Colorado in preparation for disposal or other disposition. After consideration of the Final EIS, including public comments submitted on the Draft EIS, and public comments submitted following issuance of the Final EIS, DOE issued a First Record of Decision on November 25, 1998 (63 FR 66136, December 1, 1998), on nine of the categories of material addressed in the Final EIS.

After further consideration of the Final EIS, including public comments submitted on the Draft EIS, and public comments submitted following issuance of the Final EIS, DOE has decided to implement the Preferred Alternative specified in the Final EIS for the remaining categories of material covered in the Final EIS, namely: (1) Incinerator ash residues, (2) Graphite fines residues, (3) Inorganic ash residues, (4) Molten salt extraction/electrorefining salt residues, (5) Direct oxide reduction salt residues (high plutonium concentration), (6) High-efficiency particulate air (HEPA) filter media residues, and (7) Sludge residues.

Implementation of the Preferred Alternative for these materials will involve the following:

1. Up to approximately 32,160 kg of plutonium residues (containing up to approximately 1,970 kg of plutonium) will be processed at Rocky Flats and packaged in preparation for disposal in the Waste Isolation Pilot Plant (WIPP) in New Mexico. This includes all of the residues covered by this Record of Decision, except for the residues discussed in the following paragraph.

2. Approximately 727 kg of direct oxide reduction (DOR) salt residues (containing up to about 139 kg of plutonium) will either be (1) pyro-oxidized (if necessary), followed by repackaging (with blending, if necessary, to no more than 10 percent plutonium), at Rocky Flats, or (2) pyro-oxidized at Rocky Flats (if necessary), followed by acid dissolution/plutonium oxide recovery at the Los Alamos National Laboratory (LANL). DOE expects that no more than approximately 306 kg of the DOR salts will have to be shipped to LANL for processing, with the remainder, and possibly all, of the DOR salts being processed at Rocky Flats. Any plutonium that is separated at LANL will be converted to an oxide and will be placed into safe and secure storage, along with a larger quantity of plutonium already in storage at LANL, until DOE has completed the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998; see Section VI. E. 2, below, for additional discussion of the plutonium disposition topic) and made final decisions on the disposition of the separated plutonium. Transuranic wastes generated during the acid dissolution operations at LANL will be sent to WIPP for disposal. Other wastes generated during the chemical separations operations will be disposed of in accordance with LANL's normal procedures for disposing of such wastes.

The only shipments of plutonium residues for offsite processing that might occur under this Record of Decision are shipments of no more than about 306 kg of high assay DOR salt residues to LANL. Shipment of transuranic wastes from processed Rocky Flats plutonium residues was analyzed in National Environmental Policy Act documentation previously completed for WIPP.

The actions summarized above are scheduled to take place at Rocky Flats and LANL between 1999 and 2004.

## II. Background

During the Cold War, DOE and its predecessor agencies conducted various activities associated with the production of nuclear weapons. Several intermediate products and wastes were generated as a result of those operations, some of which are still in storage at various DOE sites, including Rocky Flats. Now that the Cold War is over and the United States has ceased production of fissile nuclear weapons materials, DOE is conducting activities to safely manage, clean up, and dispose of (where appropriate) the intermediate products and wastes from prior nuclear weapons production activities. Among the intermediate products and wastes requiring proper management and preparation for disposal or other disposition are approximately 106,600 kg of plutonium residues and 700 kg of scrub alloy currently stored at Rocky Flats.

The Defense Nuclear Facilities Safety Board (Board), in its Recommendation 94–1, addressed health and safety concerns regarding various materials at Rocky Flats, including the plutonium residues and scrub alloy. The Board concluded that hazards could arise from continued storage of these materials in their current forms and recommended that they be stabilized as expeditiously as possible. Approximately 64,400 kg of the plutonium residues in storage at Rocky Flats contain very low concentrations of plutonium and are currently being stabilized under the Solid Residue Treatment, Repackaging, and Storage Environmental Assessment/Finding of No Significant Impact (Solid Residue EA, DOE/EA–1120, April 1996), thus preparing them for disposal. However, the remaining 42,200 kg of plutonium residues, which contain higher concentrations of plutonium, and all 700 kg of scrub alloy (not analyzed in the Solid Residue EA) require processing for stabilization and to prepare them for disposal or other disposition. These materials are addressed in the Final EIS.

The approximately 42,200 kg of plutonium residues consist of several heterogeneous categories of materials (e.g., ashes, salts, combustible materials, sludges, pieces of glass, pieces of graphite). On average, the plutonium residues contain about 6% plutonium by weight, although a small amount of the plutonium residues contains well above the average percentage of plutonium by weight. For example, the 315 kg of plutonium fluoride residues (less than 1 percent of the material addressed in the Final EIS) contains approximately 45% plutonium by weight. The approximately 700 kg of scrub alloy (less than 2 percent of the material addressed in the Final EIS) consists primarily of a metallic alloy of magnesium, aluminum, americium, and plutonium, containing approximately 29% plutonium by weight.

Although the average concentration of plutonium in the 42,200 kg of residues is small, there is still enough plutonium present (about 2,600 kg) to subject the residues to a special set of requirements (referred to as ''safeguards and security'' requirements) to maintain control of the materials and ensure that the plutonium in them is not stolen or diverted for illicit use, perhaps in a nuclear weapon. The 700 kg of scrub alloy, with its

greater plutonium concentration, is also subject to safeguards and security requirements. Prior to disposal or other disposition of the residues and scrub alloy, action must be taken to reduce the plutonium concentration in the materials, make the plutonium more difficult to remove from the materials, or otherwise implement steps to ensure that the plutonium would not be stolen or diverted for illicit purposes. This process is referred to as ''termination of safeguards'' or ''meeting safeguards termination limits''.

Accordingly, the Purpose and Need for Agency Action addressed in the Final EIS was to evaluate action alternatives for processing the approximately 42,200 kg of plutonium residues and 700 kg of scrub alloy currently in storage at Rocky Flats to address the health and safety concerns regarding storage of the materials, as raised by the Board in its Recommendation 94–1, and to prepare the materials for offsite disposal or other disposition (including termination of safeguards, when appropriate). The action alternatives evaluated would be implemented in a manner that supports closure of Rocky Flats by 2006 and limits worker exposure and waste production. Disposal or other disposition would eliminate the health and safety concerns associated with indefinite storage of these materials.

Subsequent to completion of the Final EIS, DOE completed consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act. Section 7 of the Endangered Species Act provides Federal agencies with the authority to determine whether a proposed Federal action may affect protected species or habitats and, if the agency determines that it will not (i.e., makes a ''no effect'' determination), then no consultation with the Fish and Wildlife Service is required. Rather than specifying a ''no effect'' determination, the Final EIS concludes that the proposed processing of plutonium residues and scrub alloy is not likely to adversely affect threatened or endangered species or critical habitats in areas involved in this proposal. (Although indicating some effect on threatened or endangered species, a ''not likely to adversely affect'' determination falls short of a determination that a species or critical habitat is likely to be adversely affected overall by the proposed action.)

Upon further review of the likely impacts of the proposed processing, DOE concludes that a ''no effect'' determination would have been more appropriate in this case because DOE does not believe that the proposed processing will affect protected species or critical habitats overall. Therefore, no consultation with the Fish and Wildlife Service is required.

The decision process reflected in this Record of Decision complies with the requirements of the National Environmental Policy Act (42 U.S.C. Sec. 4321 *et seq.*) and DOE's NEPA implementing regulations at 10 CFR Part 1021. Further, section 308 of the Fiscal Year 1999 Energy and Water Development Appropriations Act (Public Law 105–245) specifies that: ''None of the funds in this Act may be used to dispose of transuranic waste in the Waste Isolation Pilot Plant which contains concentrations of plutonium in excess of 20 percent by weight for the aggregate of any material category on the date of enactment of this Act, or is generated after such date.'' The decisions specified in this Record of Decision comply with the requirements of P.L. 105–245.

As noted above and in accordance with a plan described in Section 1.4.2 of the Final EIS, DOE has already issued a first Record of Decision on the other categories of materials (plutonium residues and scrub alloy) within the scope of the Final EIS. The material categories covered by the First Record of Decision are: (1) Sand, slag and crucible residues, (2) Direct oxide reduction salt residues (low plutonium concentration), (3) Combustible residues, (4) Plutonium fluoride residues, (5) Ful Flo filter media residues, (6) Glass residues, (7) Graphite residues, (8) Inorganic (metal and other) residues, and (9) Scrub alloy. All of these materials will also be processed in accordance with the Preferred Alternative specified in the Final EIS.

## III. Alternatives Evaluated in the Final EIS

DOE evaluated the following alternatives for management of the Rocky Flats plutonium residues covered by this Record of Decision. These alternatives are the same as the alternatives described in the first Record of Decision, although the processing technologies listed here are those that apply to the material categories covered by this Second Record of Decision:

### *III. A. Alternative 1 (No Action—Stabilize and Store)*

This alternative consists of stabilization or repackaging to prepare the material for interim storage as described in the Rocky Flats Solid Residue Environmental Assessment. Under this alternative, further processing to prepare the materials for disposal or other disposition would not occur. Under this alternative, approximately 40 percent of the Rocky Flats plutonium residues would be left in a form that would not meet the requirements for termination of safeguards, thus making these materials ineligible for disposal. Thus, while implementation of this alternative would address the immediate health and safety concerns associated with near-term storage of the materials, the health and safety risks associated with potential long-term storage of these materials would remain.

### *III. B. Alternative 2 (Processing Without Plutonium Separation)*

Under this alternative, the materials would be processed to convert them into forms that would meet the requirements for termination of safeguards. The materials would be ready for shipment to WIPP in New Mexico for disposal.

The technologies evaluated for use under this alternative for the material categories covered by this Record of Decision are listed in Table 1.

TABLE 1.—ALTERNATIVE 2 PROCESSING TECHNOLOGIES

| Material category | Processing technology |
|---|---|
| Incinerator ash residues and Inorganic ash residues | Calcination followed by vitrification. |
| | Cold Ceramification (incinerator ash residues only). |
| | Calcination followed by blend down. |
| Graphite fines residues | Vitrification. |
| | Blend down. |
| Molten salt extraction/electrorefining salt residues | Blend down. |
| DOR salt residues (high plutonium concentration) | Blend down. |
| HEPA filter media residues | Calcination followed by vitrification. |
| | Blend down. |

TABLE 1—ALTERNATIVE 2 PROCESSING TECHNOLOGIES—Continued

| Material category | Processing technology |
|---|---|
| Sludge residues | Sonic wash.<br>Calcination followed by vitrification.<br>Blend down. |

All of the technologies specified in Table 1 would be implemented onsite at Rocky Flats. The blend down operation referred to in Table 1 would consist of mixing the plutonium residues within the scope of the Final EIS with other, lower plutonium content residues that are also planned for disposal in WIPP, or with inert material, so that the resulting mixture would be below the safeguards termination limits.

*III. C. Alternative 3 (Processing With Plutonium Separation)*

Under this alternative, the plutonium residues and scrub alloy would be processed to separate plutonium from the material and concentrate it so that the secondary waste would meet the requirements for termination of safeguards and be ready for disposal, while the separated and concentrated plutonium would be placed in safe and secure storage pending disposition in accordance with decisions to be made under the Surplus Plutonium Disposition Environmental Impact Statement. DOE would not use this plutonium for nuclear explosive purposes.

The technologies evaluated for use under this alternative for the material categories covered by this Record of Decision are listed in Table 2. These technologies would be implemented at the sites specified in Table 2.

TABLE 2.—ALTERNATIVE 3 PROCESSING TECHNOLOGIES

| Material category | Processing technology | Processing site |
|---|---|---|
| Incinerator ash residues | Purex processing<br>Mediated Electrochemical Oxidation. | Savannah River Site. |
| Graphite fines residues | Mediated Electrochemical Oxidation | Savannah River Site. |
| Inorganic ash residues | None. | |
| Molten salt—extraction/electrorefining salt residues. | Salt distillation | Rocky Flats or LANL. |
| | Salt scrub followed by Purex processing | Rocky Flats/Savannah River Site. |
| | Water leach | Rocky Flats. |
| DOR salt residues (high plutonium concentration). | Salt scrub followed by Purex processing | Rocky Flats/Savannah River Site. |
| | Water leach | Rocky Flats or LANL. |
| | Acid dissolution | LANL. |
| HEPA filter media residues | Mediated Electrochemical Oxidation | Rocky Flats. |
| Sludge residues (not incl. Item Description Codes [IDCs] 089, 099 and 332). | Acid dissolution | Rocky Flats. |

*III. D. Alternative 4 (Combination of Processing Technologies)*

Under this alternative, the residues would be stabilized and blended down, if necessary, and repackaged in preparation for shipment of the material to WIPP. Blend down would be conducted so that none of the residues processed under this alternative would contain more than 10% plutonium by weight. Termination of safeguards would be accomplished through use of a variance to the safeguards requirements. A variance is the record of a review process whereby DOE's Office of Safeguards and Security approves a proposal by another part of DOE to terminate safeguards on specific quantities of safeguarded materials because of special circumstances that make the safeguards controls unnecessary. The variance to safeguards termination limits that is required to allow implementation of this alternative was approved by the DOE Office of Safeguards and Security after conducting a detailed review and extensive vulnerability assessment regarding the alternative mechanisms that would be used to protect and control access to the material. The Office of Safeguards and Security concluded that the nature of the residues, the relatively low concentration of plutonium in the residues after blend down (if necessary), and the waste management controls that would be in effect during the transportation to and staging at WIPP prior to disposal would be sufficient to provide a level of protection for the materials comparable to that required by safeguards.

*III. E. Strategic Management Approaches*

Theoretically, it would be possible to process all of the residues using only one of the alternatives listed above (e.g., all the materials would be processed under a single alternative, except for certain material categories for which there is no processing technology under that alternative). Nevertheless, in practice, DOE recognized in preparing the EIS that the most appropriate technologies were likely to be chosen separately for each material category by selecting from among the technologies in all the alternatives. However, there are too many combinations of material categories, processing technologies and processing sites to address each individual combination in the EIS in a manner that would be easily understandable. As a result, in addition to individually evaluating technologies that could be used to implement the alternatives for each material category, DOE also evaluated several ''Strategic Management Approaches.'' These approaches involve compilations of sets of processing technologies which would allow a specific management criterion to be met. The management criteria addressed in the Strategic Management Approaches are as follows:

1. No Action (i.e., Alternative 1 discussed above)

2. Preferred Alternative (Discussed in more detail in Section III. F. below).
3. Minimizing Total Processing Duration at Rocky Flats.
4. Minimizing Cost.
5. Conducting all Processing at Rocky Flats.
6. Conducting the Fewest Actions at Rocky Flats.
7. Processing with the Maximum Amount of Plutonium Separation.
8. Processing without Plutonium Separation.

The decisions on which technology to implement have been made separately for each material category covered by this Record of Decision; the Strategic Management Alternatives were merely illustrative. Nevertheless, evaluation of the Strategic Management Approaches allowed presentation of the environmental impacts of the proposed action as one set of data, instead of separate sets of data representing the impacts from management of each of the material categories individually. Examination of the various Strategic Management Approaches also allowed DOE and the public to determine whether there are any significant differences between the impacts that would result from implementation of one Strategic Management Approach as compared to any other.

*III. F. Preferred Alternative*

The preferred alternative was constructed by selecting a preferred technology for each material category from among the action alternatives (i.e., Alternatives 2, 3 and 4) described above.

The technologies that comprise the Preferred Alternative for the material categories covered by this Record of Decision are listed in Table 3 (the bases for selection of these technologies are discussed in Section 2.4 of the Final EIS and in Section VI of this Record of Decision). These technologies would be implemented at the sites specified in Table 3.

TABLE 3.—PREFERRED ALTERNATIVE PROCESSING TECHNOLOGIES

| Material category | Processing technology | Processing site |
|---|---|---|
| Incinerator ash residues | Repackage (Alternative 4) | Rocky Flats. |
| Graphite fines residues | Repackage (Alternative 4) | Rocky Flats. |
| Inorganic ash residues | Repackage (Alternative 4) | Rocky Flats. |
| Molten salt extraction/electrorefining salt residues. | Repackage (Alternative 4) | Rocky Flats. |
| DOR salt residues (high plutonium concentration). | Pyro-oxidation (if necessary) followed by acid dissolution (Alternative 3). | Rocky Flats and LANL. |
| | Pyro-oxidation (if necessary) followed by blend down and repackaging (Alternative 4). | Rocky Flats. |
| HEPA filter media residues | Neutralize (if necessary) and repackage (Alternative 4). | Rocky Flats. |
| Sludge residues | Filter/dry, if necessary, and repackage (Alternative 4). | Rocky Flats. |

## IV. Other Factors

In addition to comparing the environmental impacts of implementing the various alternatives, DOE also considered other factors in reaching the decisions announced here. These other factors included issues raised by comments received during scoping, or on the Draft and Final versions of the EIS. The other factors considered are briefly summarized in the following paragraphs.

*IV. A. Nonproliferation*

Preventing the spread of nuclear weapons has been a fundamental national security and foreign policy goal of the United States since 1945. The current United States policy is summarized in the White House Fact Sheet on Nonproliferation and Export Control Policy, dated September 27, 1993. This policy makes it clear that the United States does not encourage the civil use of plutonium and, accordingly, does not itself engage in plutonium reprocessing for either nuclear power or nuclear explosives purposes. In addition, it is United States policy to seek to eliminate where possible the accumulation of stockpiles of plutonium.

The alternatives analyzed in the Final EIS, including plutonium separation alternatives, would result in varying levels of risk associated with potential use of the plutonium in nuclear weapons, either by the United States or an adversary. None of the alternatives would eliminate the plutonium from the current inventory. Nevertheless, as discussed in Section 4.1.9 of the Final EIS, all of the action alternatives would result in appropriate management of the plutonium residues and scrub alloy to ensure that they are not stolen or diverted for illicit purposes. Furthermore, all of the action alternatives set the stage for significantly reducing the proliferation risk posed by the plutonium in the plutonium residues and scrub alloy by preparing these materials for disposal or other disposition in a form that is highly proliferation resistant (i.e., a form which contains very little plutonium per unit weight, from which the plutonium would be especially difficult to extract, or for which other measures are taken to ensure sufficient security). In addition, because of the potential concern regarding any processing and consolidating of plutonium that might be accomplished by DOE, the Secretary of Energy has committed that any plutonium-239 separated or stabilized for health and safety purposes would be prohibited from use for nuclear explosive purposes (Secretarial Action Memorandum approved on December 20, 1994). This prohibition would apply to plutonium-239 processed through actions implemented by this Record of Decision.

*IV. B. Technology Availability and Technical Feasibility*

DOE considered technology availability and technical feasibility in identifying processing technologies to be evaluated in the Final EIS and in making the decisions specified in Section VI of this Record of Decision. DOE considered the extent to which technology development would be required and the likelihood of success of such endeavors. All of the technologies evaluated in the Final EIS are technically feasible. In general, however, the more that processing technologies vary from the historical processes and facilities used by DOE, the greater the technical uncertainty and extent to which new facilities or modifications to existing facilities would have to be made (as discussed in Section 4.17.7 of the Final EIS).

**IV. C. Timing**

DOE considered the degree to which the various technologies that could potentially be used in management of the plutonium residues and scrub alloy would support DOE's plans for cleanup of the radioactive, chemical and other hazardous wastes left after 50 years of nuclear weapons production by the United States, as outlined in the document titled Accelerating Cleanup: Paths to Closure (DOE/EM–0362, June 1998), including the goal of closing Rocky Flats by 2006.

*IV. D. Cost*

In reaching decisions on processing technologies, an important consideration for DOE was cost. DOE evaluated the costs of implementing the various processing technologies for each material category on both an individual basis and collectively. DOE estimates it would cost from approximately $428 million to $814 million to implement the Strategic Management Approaches (other than No Action) analyzed in the Final EIS. An even larger expenditure (approximately $1.1 billion) would be required to pay for continued storage of the nuclear materials if DOE chose to implement the No Action alternative. On the other hand, DOE expects that the annual costs of operating and maintaining Rocky Flats facilities will decrease as nuclear materials are removed from the site. DOE expects further reductions in costs as the Rocky Flats facilities are deactivated.

**V. Comments on the Final EIS**

The only comments on the Final EIS were received by DOE prior to issuance of the first Record of Decision. The responses to those comments were provided in Section V of the first Record of Decision.

**VI. Decision**

DOE has decided to implement the proposed action in the manner described in this section. The alternatives that DOE has decided to implement are presented separately below for each material category because the decisions on the selected technology were based on considerations that are unique to the chemical and physical characteristics of the individual material categories. Furthermore, these decisions are independent of one another and are not connected to the decisions that were made in the first Record of Decision. Although alternative technologies analyzed in the EIS might use certain common facilities or personnel, sufficient facility capacity and personnel are available to allow use of any technology without interfering with any other.

For clarity and brevity, this section also includes the discussion of the environmentally preferable alternative (as required by CEQ regulations [40 CFR 1505.2]) and the basis for selection of the alternative to be implemented.

The analysis of alternative technologies presented in the Final EIS indicates that all of the alternative technologies, including those in the Preferred Alternative and the No Action alternative, would have only small impacts on the human environment on or around the DOE management sites and on the populations along transportation routes (see Sections 4.23 and 4.24 of the Final EIS). Using conservative assumptions (i.e., assumptions that tend to overestimate risks), the potential risks from incident-free operations and postulated accidents that are of most interest would be those associated with radiation exposure to workers performing processing operations on the plutonium residues or near loaded transportation containers, and transportation routes. The Final EIS also estimates (1) the risks from incident-free operations and postulated accidents associated with chemical releases and transportation accidents; (2) the amounts of various wastes and other materials that would result from implementation of the various alternative technologies; (3) the cost of implementing the various alternative technologies; (4) the effect on nuclear weapons nonproliferation; and (5) air quality impacts.

Environmentally Preferable Alternative

Although there are differences among the estimated impacts for the various alternatives, the impacts would be small for any of the alternative technologies, and the magnitude of the differences in potential impacts between alternatives is small. In addition, the nature of the potential impacts is such that comparing them is a very judgmental process. For example, under the salt distillation at Rocky Flats alternative (Alternative 3) for electrorefining and molten salt extraction residues (not including IDC 409), only 519 drums of transuranic waste would be generated, whereas the blend down at Rocky Flats alternative for this material (Alternative 2) would generate 10,802 drums of transuranic waste. However, salt distillation would also result in generation of 569 kg of separated plutonium, whereas blend down would result in no separated plutonium. Comments received from members of the public on the Draft EIS demonstrate that different individuals would make different value judgements as to which of these product/waste materials is of most concern. In addition to having no indisputable means of identifying which waste or product stream would be most important to minimize, there is no indisputable way to trade off differences between the amounts of various types of waste and separated plutonium against differences in levels of radiological risk or chemical hazards, or between risks to workers versus risks to the public (risks to the public would be lower than those to workers for all technologies evaluated in the Final EIS).

In general, because of the small risks that would result from any of the action alternatives (as demonstrated by Tables in Sections 2.10, 4.2, 4.3, 4.6 and 4.7 of the Final EIS) and the absence of any clear basis for discerning an environmental preference, DOE considers that no one of the action alternatives is clearly environmentally preferable over any other action alternative. On the other hand, under the No Action alternative, the materials would be left in storage at Rocky Flats with no defined disposal path. There would be additional risk associated with both the indefinite storage and whatever processing may ultimately be determined to be necessary to prepare the material for ultimate disposition. There would also be risks from potential degradation of storage facilities and containers. Accordingly, in consideration of the long-term risks that would be associated with implementation of the No Action alternative, DOE considers that all of the action alternatives are environmentally preferable over the No Action alternative.

The processing technologies that DOE has decided to implement are as follows for each material category addressed in this Record of Decision:

*VI. A. Incinerator Ash Residues*

VI. A. 1. Selected Alternative

DOE has decided to repackage the incinerator ash residues to prepare them for disposal in WIPP (Alternative 4). Material that is above 10 percent plutonium by weight will be blended with low plutonium concentration material from the same Item Description Code (IDC), or with inert material, to reach the 10 percent plutonium limit.

VI. A. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow

DOE to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of resources that would otherwise be required to manage these residues to accelerate other activities required to close the site.

*VI. B. Graphite Fines Residues*

VI. B. 1. Selected Alternative

DOE has decided to repackage the graphite fines residues to prepare them for disposal in WIPP (Alternative 4). Material that is above 10 percent plutonium by weight will be blended with low plutonium concentration material from the same IDC, or with inert material, to reach the 10 percent plutonium limit.

VI. B. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow DOE to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of resources that would otherwise be required to manage these residues to accelerate other activities required to close the site.

*VI. C. Inorganic Ash Residues*

VI. C. 1. Selected Alternative

DOE has decided to repackage the inorganic ash residues to prepare them for disposal in WIPP (Alternative 4). Material that is above 10 percent plutonium by weight will be blended with low plutonium concentration material from the same IDC, or with inert material, to reach the 10 percent plutonium limit.

VI. C. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest and least costly of all processing technologies considered, and the one that will allow DOE to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of resources that would otherwise be required to manage these residues to accelerate other activities required to close the site.

*VI. D. Molten Salt Extraction/ Electrorefining Salt Residues*

VI. D. 1. Selected Alternative

DOE has decided to repackage the molten salt extraction/electrorefining salt residues to prepare them for disposal in WIPP (Alternative 4). Material that is above 10 percent plutonium by weight will be blended with low plutonium concentration material from the same salt category, or with inert material, to reach the 10 percent plutonium limit.

VI. D. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for this material category because it is the simplest of all processing technologies considered and the one that will allow the site to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of the resources that would otherwise be required to manage these residues to accelerate completion of other activities required to close the site. Finally, selection of repackaging avoids the technical uncertainty (discussed in Section 4.17.7 of the Final EIS) that would be associated with implementation of the least expensive alternative, i.e., salt distillation.

*VI. E. Direct Oxide Reduction Salt Residues (High Plutonium Concentration)*

VI. E. 1. Selected Alternative

DOE has decided to take the following action for the high plutonium concentration direct oxide reduction salt residues:

a. As much of the high plutonium concentration direct oxide reduction salt residues as possible, and probably all, will be pyro-oxidized (if necessary), and then repackaged (with blending to no more than 10 percent plutonium, if necessary) at Rocky Flats to prepare them for disposal in WIPP (Alternative 4).

b. If any of the high plutonium concentration direct oxide reduction salt residues are found to be unsuitable for processing as described in the preceding paragraph, they would be transported to LANL where the plutonium could be separated from the residues by acid dissolution (Alternative 3).[1]. Prior to shipment, these residues would be pyro-oxidized at Rocky Flats (if necessary). The recovered plutonium would be converted into an oxide and placed into safe and secure storage, along with a larger quantity of plutonium already in storage at LANL, until DOE has completed the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998; see Section VI. E. 2, below, for additional discussion of plutonium disposition) and made final decisions on the disposition of the separated plutonium. Transuranic wastes generated during the acid dissolution operations would be sent to WIPP for disposal. Other wastes generated during the chemical separations operations would be disposed of in accordance with LANL's normal procedures for disposing of such wastes. DOE expects that, at most, approximately 306 kg of the DOR salts might be shipped to LANL for processing, with the remainder, and probably all, of the DOR salts being processed at Rocky Flats.

VI. E. 2. Basis for the Decision

Repackaging at Rocky Flats was chosen as the technology to be implemented for as much of this material category as possible because it is the simplest and least costly of all processing technologies considered and the one that will allow the site to complete processing and ready the material for disposal most expeditiously. This approach will also allow use of the resources that would otherwise be required to manage these residues to accelerate completion of other activities required to close the site.

Acid dissolution/plutonium oxide recovery at LANL was selected as the technology to be implemented for any material in this category that cannot be repackaged as discussed above because this process will result in shorter exposures of the workers to radiation than would be experienced with the blend down process in Alternative 2, thus providing health and safety benefits to the workers. Selection of acid dissolution also avoids the technical uncertainty associated with the water leach plutonium separation process (see Section 4.17.7 of the Final EIS).

The Final EIS specified that any plutonium separated under any alternative analyzed in this EIS would be disposed of using the immobilization process. (Final EIS, page 2–2.) Upon further review, DOE has decided for the following reasons not to make a determination at this time on the disposition of any plutonium separated under the decisions announced in this ROD. In December 1996, DOE published the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (DOE/EIS–0229, the PEIS). That PEIS analyzed, among other things, the potential environmental consequences of alternative strategies for the long-term storage and disposition of weapons-usable plutonium that has

[1] As stated in the Final EIS, Appendix B, end of Section B.3.3.3, there are no Resource Conservation and Recovery Act hazardous waste codes associated with any of the DOR salts.

been or may be declared surplus to national security needs. DOE announced the Record of Decision for that PEIS in January 1997, which outlines an approach to plutonium disposition that would allow for both the immobilization of some of the surplus plutonium, and the use of some of the surplus plutonium as mixed oxide (MOX) fuel in existing domestic, commercial reactors (62 FR 3014, January 21, 1997).

As a follow-on analysis to that PEIS, DOE is in the process of preparing the Surplus Plutonium Disposition Environmental Impact Statement, which addresses the extent to which each of the two surplus plutonium disposition approaches (immobilization and MOX) would be implemented. Thus, at the present time, DOE has not decided the extent to which either the immobilization or the MOX approach to surplus plutonium disposition would be implemented. Moreover, as noted above, even after completion of the Surplus Plutonium Disposition Environmental Impact Statement, DOE does not expect to make decisions about which, if any, of the surplus plutonium would be used in MOX fuel until shortly before any such material would be transferred to a MOX fuel fabrication facility. Thus, DOE believes at this time it is appropriate not to make any commitment as to which approach would be implemented for the disposition of any plutonium to be separated under the decisions announced in this Second Record of Decision.

The plutonium declared to be surplus includes any weapons-useable plutonium resulting from the stabilization (for health and safety reasons) of the Rocky Flats DOR salt residues discussed under this Second Record of Decision. As a result, weapons-useable plutonium that is separated under actions from this Second Record of Decision is a candidate for both of the surplus weapons-useable plutonium disposition alternatives that have been identified by DOE (i.e., MOX and immobilization).

*VI. F. HEPA Filter Media Residues*

VI. F. 1. Selected Alternative

DOE has decided to neutralize and dry the HEPA filter media in IDC 338, as necessary, and then repackage them in preparation for disposal in WIPP. DOE has determined that the other HEPA filter media do not need to be neutralized and dried. They will be repackaged in preparation for disposal in WIPP.

VI. F. 2. Basis for the Decision

The average concentration of plutonium in the HEPA filter media residues is less than 10 percent, allowing them to be prepared for disposal in WIPP with little processing. Selection of the repackaging alternative (Alternative 4) allows DOE to use resources that would otherwise be required to process the HEPA filter media to accelerate completion of other activities required to process other residues and close the site. It also allows DOE to avoid the technical uncertainty (discussed in Section 4.17.7 of the Final EIS) that would be associated with selection of the less expensive vitrification technology or the uncertainty (also discussed in Section 4.17.7 of the Final EIS) associated with whether the less expensive blend down alternative would be sufficient to eliminate the safety concerns associated with nitric acid contaminated filters.

*VI. G. Sludge Residues*

VI. G. 1. Selected Alternative

DOE has decided to repackage all sludge residues in IDCs 089, 099 and 332 to prepare them for disposal in WIPP (Alternative 4). DOE has decided to filter and dry all of the other sludge residues, as necessary, and then repackage them to prepare them for disposal in WIPP (Alternative 4).

VI. G. 2. Basis for the Decision

Repackaging under Alternative 4 was selected for the sludges in IDCs 089, 099 and 332 because they would be difficult to process by other means. Furthermore, their small quantity (about 7 kg bulk [0.95 kg plutonium]) makes them particularly easy to process by repackaging. Use of repackaging under Alternative 4 for the sludges in IDCs 089, 099 and 332 will avoid the technical uncertainties (discussed in Section 4.17.7 of the Final EIS) that would be associated with the vitrification alternative.

Filtration and drying, followed by repackaging under Alternative 4, was selected for the remaining sludge residues because it is the simplest of all processing technologies considered and the one that will allow the site to complete processing and ready the material for disposal most expeditiously. This approach will allow use of the resources that would otherwise be required to manage these residues to accelerate completion of other activities required to close the site. It will also avoid the uncertainty regarding whether the less expensive blend down alternative would be sufficient to address the safety issues related to the nitric acid and solvent contamination of the sludges.

**VII. Use of All Practical Means To Avoid or Minimize Harm**

Implementation of this decision will result in low environmental and health impacts. However, DOE will take the following steps to avoid or minimize harm wherever possible:

*VII. A.*

DOE will use current safety and health programs and practices to reduce impacts by maintaining worker radiation exposure as low as reasonably achievable and by meeting appropriate waste minimization and pollution prevention objectives.

*VII. B.*

DOE will provide a level of health and safety for DOE transportation operations that is equivalent to or greater than that provided by compliance with all applicable Federal, State, Tribal, and local regulations. In addition to meeting applicable shipping containment and confinement requirements of the Nuclear Regulatory Commission regulations on Packaging and Transportation of Radioactive Material (10 CFR Part 71) and Department of Transportation regulations at 49 CFR, all packaging for transportation of the material covered by this Record of Decision will also be certified by DOE. DOE also provides Federal, State, Tribal and local authorities with access to training and technical assistance necessary to allow them to safely, efficiently, and effectively respond to any incident involving transportation of the materials covered by this Record of Decision. Items A and B above will be accomplished under existing business practices in the normal course of implementing this Record of Decision.

**VIII. Conclusion**

DOE has decided to implement the Preferred Alternative specified in the Final EIS to prepare the plutonium residue categories specified in Sections I and VI of this Record of Decision for disposal or other disposition. This decision is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315). The goal of this decision is to prepare the plutonium residues for disposal or other disposition in a manner that addresses immediate health and safety concerns associated with storage of the materials, and that also supports Rocky Flats closure. Disposal or other disposition of these materials will also eliminate health and safety concerns and costs that would be

associated with indefinite storage of these materials.

Issued in Washington, D.C. this 11th day of February, 1999.

**James M. Owendoff,**

*Acting Assistant Secretary for Environmental Management.*

[FR Doc. 99–3987 Filed 2–17–99; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER99–978–000 and EL99–31–000]**

### Boston Edison Company; Notice of Initiation of Proceeding and Refund Effective Date

February 11, 1999.

Take notice that on February 10, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–31–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–31–000 will be 60 days after publication of this notice in the **Federal Register**.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3954 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–96–001]**

### CNG Transmission Corporation; Notice of Amendment

February 11, 1999.

Take notice that on February 9, 1999, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP99–96–001 to amend its pending application filed on December 2, 1998 in Docket No. CP99–96–000. This application is on file with the Commission and available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

CNG states that the purpose of the amendment is to revise the facilities CNG proposed to construct and operate at its North Summit Storage Field. Specifically, CNG is withdrawing its request for authorization to convert Well UW–207 from an observation well to a storage well and to construct approximately 3,554 feet of 8-inch diameter pipeline with appurtenant facilities designated as Line No. UP–25.

Any person desiring to be heard or making any protest with reference to said application should on or before March 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who filed to intervene in Docket No. CP99–96–000 need not file again.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3894 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP99–189–000]**

### Columbia Gas Transmission Corporation; Notice of Application

February 11, 1999.

Take notice that on February 2, 1999, Columbia Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP99–189–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in place approximately 0.65 mile of 6-inch pipeline located in Franklin County, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Specifically, Columbia proposes to abandon approximately 0.65 mile of 6-inch transmission Line 138 and appurtenances located in Franklin County, Pennsylvania. Columbia states that it was authorized to own and operate the facilities proposed for abandonment in Docket No. CP71–132–000. Columbia states that the section of Line 138 for which abandonment in place authority is requested is an uncoated, steel pipeline in need of replacement due to its deteriorating condition. Columbia states that there are no points of delivery from this section of Line 138.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.2111 and the Regulations under the Natural Gas act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas

Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the pubic convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3896 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–223–000]**

## Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 11, 1999.

Take notice that on February 9, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of March 11, 1999:

Third Revised Sheet No. 500
Third Revised Sheet No. 510
Third Revised Sheet No. 514
Third Revised Sheet No. 518
First Revised Sheet No. 538

Columbia states that this filing is being submitted to modify the pro forma service agreements in its tariff to specify types of permissible rate discounts. As permissible rate discounts, such discounts would not constitute a ''material deviation.''

Columbia states that copies of its filing have been mailed to all firms customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3905 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–222–000]**

## Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 11, 1999.

Take notice that on February 9, 1999, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, bearing a proposed effective date of March 11, 1999:

Third Revised Sheet NO. 317

Columbia Gulf states that this filing is being submitted to modify the pro forma service agreement in its tariff to specify types of permissible rate discounts. As permissible rate discounts, such discounts would not constitute a ''material deviation.''

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervent. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 99–3904 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP99–188–001]**

## Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 11, 1999.

Take notice that on February 9, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective February 1, 1999:

Third Revised Sheet No. 22
Second Revised Sheet No. 23
Second Revised Sheet No. 24
First Revised Sheet No. 24A
Third Revised Sheet No. 22
Second Revised Sheet No. 61
Fourth Revised Sheet No. 64
Fifth Revised Sheet No. 314
Fourth Revised Sheet No. 332
Substitute Second Revised Sheet No. 337
Substitute Second Revised Sheet No. 339

Equitrans states that the purpose of this filing is to correct the pagination and have the marked version of Sheet Nos. 337 and 339 now contain the same information on both the electronic and paper copies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

This filing may also be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3903 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Alaska Project Nos. 11597 and 11599]**

## Ketchikan Public Utilities (Whitman Lake and Connell Lake Hydroelectric Projects); Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

February 11, 1999.

The Federal Energy Regulatory Commission (Commission) regulations allow applicants to prepare their own Environmental Assessment (EA) for hydropower projects and file it with the Commission along with their license application as part of the applicant-prepared EA (APEA) process. Ketchikan Public Utilities (KPU) received approval from the Commission to prepare an EA for the proposed Whitman and Connell Lakes Hydroelectric Projects, No. 11597 and No. 11599, respectively.

KPU will hold three scoping meetings, pursuant to the National Environmental Policy Act (NEPA) of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, KPU will: (1) summarize the environmental issues tentatively identified for analysis in the EA: (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA: (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

### Scoping Meetings

The times and locations of the three scoping meetings are:

*Agency Scoping Meetings*

March 3, 1999

Whitman Lake, 8:30 AM to 11:30 AM, Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska

March 3, 1999

Connell Lake, 1:00 PM to 4:00 PM, Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska

*Public Scoping Meeting*

March 3, 1999

Whitman and Connell Lakes, 7:00 PM to 10:00 PM, Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, KPU prepared and distributed an Initial Stage Consultation Document (ISCD) and a Scoping Document in January 1999. Copies of the ISCD and the Scoping Document can be obtain by calling Mr. Don Thompson of Wescorp, KPU's agent at (206) 275–1000. Copies of both documents will also be available at all scoping meetings.

### Site Visit

For those who intend to participate in scoping, KPU will also conduct site visits to the proposed Whitman Lake and Connell Lake projects on Thursday, March 4, 1999, if sufficient interest exists. Those attending the site visit should arrange their own transportation and meet at Connell Lake dam at 9:00 A.M. We will continue to Ward Cove and the Whitman Lake hatchery by vehicle. From Whitman Creek, those who wish may hike the 0.5 miles up the hatchery water supply pipe to Whitman dam. Hikers may need to sign a waiver of liability. Because of the remoteness and difficult access to the Whitman dam site, those attending the site visit should be physically fit and must wear appropriate clothing and footgear. Participants must provide their own sack lunches. Those wishing to visit the project sites should notify Mr. Don Thompson at (206) 275–1000, no later than Feb 28, 1999.

### Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission will not conduct a NEPA scoping meeting after the application and draft EA are filed with the Commission.

Both scoping meetings will be recorded by a stenographer or tape recorder, and will become part of the formal record of the proceedings for this project.

those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments must be submitted by May 3, 1999, and should be mailed to: Mr. Don Thompson, Wescorp, 3035 Island Crest Way, Suite 200, Mercer Island, Washington 98040. All correspondence should show one of the following captions on the first page:

Scoping Comments, Whitman Lake Hydroelectric Project, Project No. 11597, Alaska, or

Scoping Comments, Connell Lake Hydroelectric Project, Project No. 11599, Alaska.

For further information please contact Don Thompson at (206) 275–1000, or E-mail thompson@wescorp.net, or Carter Kruse of the Commission at (202) 219–3023, or E-mail carter.kruse@ferc.fed.us.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3899 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER99–1035–000 and EL99–34–00]**

## Pacific Gas and Electric Company; Notice of Initiation of Proceeding and Refund Effective Date

February 11, 1999.

Take notice that on February 10, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–34–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–34–000 will be 60 days after publication of this notice in the **Federal Register**.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3953 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–193–000]**

## Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

February 11, 1999.

Take notice that on February 3, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–193–000

a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct, own, maintain and operate a new point of delivery on its existing 30-inch Line Nos. 15 and 25 in Wilson County, Tennessee, to make deliveries to Middle Tennessee Natural Utility District (Middle Tennessee), a municipal distribution company and existing Texas Eastern customer, under the blanket certificate issued in Docket No. CP82–535–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Texas Eastern proposes to construct, install, own, operate and maintain dual 8-inch tap valves, dual 8-inch check valves and related piping (tap). Additionally, Texas Eastern will install, own, operate and maintain dual 6-inch turbine meters with associated piping and valves (meter station), approximately 100 feet of 8-inch pipeline (connecting pipe), and electronic gas measurement equipment (EGM). Texas Eastern states that the maximum daily delivery capacity of the proposed delivery point will be approximately 50 MMCF/D.

Texas Eastern estimates the cost for the proposed project to be approximately $1,485,000 in 1999 dollars. Texas Eastern states that pursuant to Section 11.2 of its General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, it is waiving the facility cost reimbursement requirement set forth in Section 11.1 of the General Terms and Conditions. Texas Eastern claims that it is entering into a new long-term firm service agreement with Middle Tennessee pursuant to its Rate Schedule FT–1. This service agreement will have a primary term of twelve years, will be subject to the maximum rates applicable to Rate Schedule FT–1, and will result in annual reservation charge revenue of approximately $549,000. Therefore, according to Texas Eastern, the new Rate Schedule FT–1 service agreement with Middle Tennessee will make construction of the facilities economical to Texas Eastern.

Texas Eastern states that it will provide service to the proposed delivery point by using existing capacity on its system and it will have no effect on its peak day or annual deliveries. Texas Eastern has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefore, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3897 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MG99–12–000]**

## Total Peaking Services, L.L.C.; Notice of Filing

February 11, 1999.

Take notice that on February 2, 1999, Total Peaking Services, L.L.C. filed standards of conduct under Order Nos. 497 *et seq.*,[1] 566 *et seq.*,[2] and 599.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 26, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3898 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1985–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶30,934 (1991), *rehearing denied,* 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (July 30, 1998).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–179–000]**

## Williams Gas Pipelines Central, Notice of Request Under Blanket Authorization

February 11, 1999.

Take notice that on January 28, 1999, Williams Gas Pipelines Central, Inc. (Williams), formerly named Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–179–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization (1) to install and operate a tap, measuring, and appurtenant facilities for the delivery of transportation gas to UCB Films, Inc. (UCB) and (2) to reclaim two existing meter settings and approximately 80 feet of 2-inch connecting pipe, all in Shawnee County, Kansas, under the blanket authorization issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

The projected annual volume of delivery is estimated to be approximately 1,445 MDth the first year increasing to approximately 1,927 MDth within three years. Peak day volume is estimated to be 3,960 Dth. The estimated total project cost will be approximately $98,400 which will be fully reimbursed by UCB.

Williams states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers. The proposed changes will not have an effect on Williams' peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3895 Filed 2–17–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. AC99–35–000, et al.]**

## Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 10, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Illinois Power Company

[Docket Nos. AC99–35–000 and AC99–35–001]

Take notice that on February 2, 1999, as amended on February 4, 1999, Illinois Power Company (IP) filed a letter, requesting approval of its' accounting for the write down of Clinton Power Station (a nuclear generating facility) and simultaneously to affect a quasi-reorganization in which certain of IP's assets and liabilities would be restated to their current market value. This filing is for accounting purposes only.

*Comment date:* March 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 2. San Diego Gas & Electric Company; Cabrillo Power I LLC, and Cabrillo Power II LLC

[Docket No. EC99–26–000

Take notice that on February 5, 1999, San Diego Gas & Electric Company (SDG&E), Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) tendered for filing a letter supplementing their application filed on January 12, 1999, in the above-captioned docket.

*Comment date:* February 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Maine Public Service Company

[Docket Nos. EC99–29–000 and ER99–1692–000]

Take notice that on February 3, 1999, Maine Public Service Company (MPS) tendered for filing an application under sections 203 and 205 of the Federal Power Act in connection with the proposed sale of generation assets by MPS to WPS Power Development, Inc. (PDI) or its designees PDI Canada, Inc., and PDI New England, Inc. Pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b, MPS requests Commission approval of the sale of minimal jurisdictional facilities. Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, MPS also seeks approval of certain agreements, including an interconnection agreement, made in connection with the sale of generation assets.

*Comment date:* March 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 4. San Diego Gas & Electric Company; Duke Energy South Bay LLC

[Docket No. EC99–30–000

Take notice that on February 5, 1999, San Diego Gas & Electric Company (SDG&E) and Duke Energy South Bay LLC (Duke South Bay) tendered for filing, pursuant to Section 203 of the Federal Power Act, an application for Commission approval to effect assignment to Duke South Bay of a jurisdictional Reliability Must-Run Agreement (the RMR Agreement). The RMR Agreement, between SDG&E and the California Independent System Operator Corporation, relates to the operation of ADG&E's and Duke South Bay have requested that the Commission approve the assignment on or before March 30, 1999.

*Comment date:* March 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 5. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; LIPA; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corporation; Power Authority of the State of New York; New York Power Pool

[Docket No. EC99–31–000]

Take notice that on February 5, 1999, the Member Systems of the New York Power Pool tendered for filing a Joint Application for Authorization To Convey Operational Control of Designated Jurisdictional Facilities and To Transfer Assets to an Independent System Operator. This application requests authorization to transfer operational control (but not ownership) of designated transmission facilities to an Independent System Operator (ISO); and to transfer to the ISO certain assets, including physical assets and deferred

assets, consisting of costs related to the establishment of the ISO.

*Comment date:* March 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Camden Cogen L.P.**

[Docket No. EG99–72–000]

Take notice that on February 4, 1999, Camden Cogen L.P. (Camden Cogen), c/o East Coast Power L.L.C., 1400 Smith Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Camden Cogen owns a gas-fired topping-cycle cogeneration facility with the capacity of 146 MW, located in Camden, New Jersey. Camden Cogen sells power to Public Service Electric and Gas Company.

*Comment date:* March 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**7. Cogen Technologies NJ Venture**

[Docket No. EG99–73–000]

Take notice that on February 4, 1999, Cogen Technologies NJ Venture (NJ Venture), c/o East Coast Power L.L.C., 1400 Smith Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

NJ Venture owns a gas-fired combined-cycle cogeneration facility located in the IMTT facility in Bayonne, New Jersey, with a capacity of 176 MW. NJ Venture sells power to Jersey Central Power & Light Company, and Public Service Electric and Gas Company.

*Comment date:* March 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**8. Cogen Technologies Linden Venture, L.P.**

[Docket No. EG99–74–000]

Take notice that on February 4, 1999, Cogen Technologies Linden Venture, L.P. (Linden Venture), c/o East Coast Power L.L.C., 1400 Smith Street, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Linden Venture owns a topping-cycle cogeneration facility with a capacity of 715 MW located in the Bayway Refinery facility in Linden, New Jersey. Linden Venture sells power to the Consolidated Edison Company of New York.

*Comment date:* March 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of application.

**9. EME Homer City Generation L.P.**

[Docket No. EG99–75–000]

Take notice that on February 4, 1999, EME Homer City Generation L.P. (EMEHCG) of 18101 Von Karman Avenue, Suite 1700, Irvine, CA 92612, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

EMEHCG is a Pennsylvania partnership that will own and operate the Homer City Electric Generating Station located in southwestern Pennsylvania. The Pennsylvania Public Utilities Commission, the New York Public Service Commission and the New Jersey Board of Public Utilities have found that allowing the facility to be an eligible facility will benefit consumers, is in the public interest and does not violate state law.

*Comment date:* March 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**10. Montaup Electric Company**

[Docket No. EL99–36–000]

Take notice that on February 5, 1999 Montaup Electric Company (Montaup) submitted for filing, pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e) and Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, a petition for issuance of a declaratory order.

It its submittal, Montaup asked the Commission to issue a declaratory order ruling (a) that a proposed amendment to a unit power purchase agreement with Boston Edison Company, under which Montaup purchases electricity produced by the Pilgrim Nuclear Plant, represents a prudent and reasonable step in the interests of its ratepayers; and (b) that recovery of certain ''buydown'' expenses it would incur to modify its contractual obligation to purchase electricity under the unit power purchase agreement may lawfully be recovered from its wholesale customers through the variable portion of Montaup's Contract Termination Clause.

Montaup's petition requests that the Commission issue the declaratory order it has sought not later than the date upon which the Commission acts on the pending application in Docket No. EC99–18–000 for approval of the proposed sale of the Pilgrim Plant to Entergy Nuclear Generation Company.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the States of Rhode Island and Connecticut.

*Comment date:* March 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Coral Power, L.L.C.; Cogentrix Energy Power Marketing, Inc.; Merrill Lynch Capital Services, Inc.**

[Docket Nos. ER96–25–014; ER95–1739–014; and ER99–830–001]

Take notice that on February 4, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the Internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**12. Cumberland Power, Inc.; Strategic Power Management, Inc.; Coastal Electric Services Company and Engage Energy US, L.P.; First Power, L.L.C.**

[Docket Nos. ER96–2624–002; ER96–2591–010; ER94–1450–014; ER97–654–002; ER97–654–003; ER97–654–004 and ER97–3580–006]

Take notice that on February 5, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**13. AYP Energy, Inc.**

[Docket No. ER99–954–000]

Take notice that on February 4, 1999, AYP Energy, Inc. (AYP) filed an amendment to its FERC Electric Rate Schedule No. 1. The amendment was intended to meet the Commission's requirements as ordered in Docket No. ER99–954–000.

AYP Energy, Inc. seeks a February 1, 1999 effective date for the amendment to its Electric Rate Schedule No. 1.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* February 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

**14. The Cincinnati Gas & Electric Co.**

[Docket No. ER99–1611–000]

Take notice that on February 5, 1999, the above-referenced public utility filed its quarterly transaction report for the quarter ending December 31, 1998.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Rochester Gas and Electric Corporation**

[Docket No. ER99–1728–000]

Take notice that on February 5, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Enserch Energy Services (New York), Inc. (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Tariff, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of January 29, 1999, for Enserch Energy Services (New York), Inc.'s Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. Rochester Gas and Electric Corporation**

[Docket No. ER99–1729–000]

Take notice that on February 5, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Enserch Energy Services, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Tariff, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of January 29, 1999, for Enserch Energy Services, Inc.'s Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. Central Vermont Public Service Corporation**

[Docket No. ER99–1741–000]

Take notice that on February 5, 1999, Central Vermont Public Service Corporation tendered for filing a Service Agreement with Southern Company Energy Marketing, L.P., under its FERC Electric Tariff Original Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the Service Agreement to become effective on January 10, 1999.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Cinergy Services, Inc.**

[Docket No. ER99–1742–000]

Take notice that on February 5, 1999, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and PP&L EnergyPlus Co., (PP&L).

Cinergy and PP&L are requesting an effective date of January 15, 1999.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. FirstEnergy Corp., and Pennsylvania Power Company**

[Docket No. ER99–1743–000]

Take notice that on February 5, 1999, FirstEnergy Corp., (First Energy), tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with Virginia Electric & Power Company and Allegheny Energy Solutions, Inc., pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements are January 27, 1999 and February 2, 1999.

*Comment date:* February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

**20. Western Resources, Inc.**

[Docket No. ES99–26–000]

Take notice that on February 3, 1999, Western Resources, Inc. (Western Resources) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, for authorization to issue from time to time of up to $850,000 of Western Resources' common stock under its Employees' 401(k) Savings Plan. Western Resources further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

*Comment date:* March 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

**21. Western Resources, Inc.**

[Docket. No. ES99–27–000]

Take notice that on February 3, 1999, Western Resources, Inc. (Western Resources) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, for authorization to issue from time to time of up to $4,000,000 of Western Resources' common stock under its Direct Stock Purchase Plan. Western Resources further requests an exemption from the Commission's competitive bidding and negotiated placement requirements.

*Comment date:* March 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–3892 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Request for Motions to Intervene and Protests

February 11, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Porject No.:* P–11658–000.

c. *Dated filed:* January 11, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Mahoning Creek Dam Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Mahoning Dam on the Mahoning Creek, near the Town of Putneyville, Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § § 791 (a)—825(r).

h *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2808 or E-mail address at Lee.Ed@FERC.fed.us.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Mahoning Dam and Reservoir, and would consist of the following facilities: (1) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 1,400 kilowatts; (2) a new 1,500-foot-long, 14.7-kV transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 9 gigawatthours. The cost of the studies under the permit will not exceed $800,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with the 187 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the prelimary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intevene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3893 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

February 11, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11641–000.

c. *Date filed:* November 27, 1998.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Tionesta Dam Project.

f. *Location:* At the Corps of Engineer's Tionesta Dam, on the Tionesta Creek, near the town of Tionesta, Forest County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Tionesta Dam and consist of the following: (1) a 66-inch-diameter, 50-foot-long penstock, constructed in the existing discharge conduit; (2) a powerhouse, containing two generating units with a combined capacity of 1.2 MW and an estimated average annual generation of 9.0 Gwh; and (3) a 1,500-foot-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice or intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3900 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Notice of Application Tendered For Filing With the Commission and Soliciting Additional Study Requests

February 11, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11651–000.

c. *Date filed:* December 21, 1998.

d. *Applicant:* Calleguas Municipal Water District.

e. *Name of Project:* Las Posas Basin Aquifer Storage and Recovery.

f. *Location:* Near the town of Moorpark, Ventura County, California. The project does not occupy or affect public lands or reservations of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Don Kendall, General Manager, Calleguas Municipal Water District, 2100 Olsen Road, Thousand Oaks, California 91360.

i. *FERC Contact:* Any questions on this notice should be addressed to Sergiu Serban, E-mail address sergiu.serban@ferc.fed.us, or telephone 202–501–6935.

j. *Deadline for filing additional study requests:* February 21, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is not ready for environmental analysis at this time.

l. Description of the Project: The project would use five existing dual-purpose wells operated to: (1) inject and store surplus imported water and (2) recover the stored water to meet drought and other demands. The wells would be equipped at ground surface with motor/generators to provide generation of electrical power when the imported water is being injected into the ground for storage. The project incorporates two facilities: (a) The Fairview Well Facilities, consisting of one deep well vertical turbine pump with 300 hp/64 Kw two-speed winding electric induction motor/generator; and other appurtenances, and (b) The Wellfield No. 1 Facilities, consisting of four deep well vertical turbine pumps each with 600 hp/120 Kw two-speed winding electric induction motor/generators; and other appurtenances. The annual generation would be 2,500,000 Kwh and would be transmitted to Southern California Edison's local power transmission lines.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the California State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3901 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

February 11, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11656–000.

c. *Date filed:* January 5, 1999.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric.

f. *Location:* In the Tongrass—National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801, (907) 780–6315.

i. *FERC Contact:* Any questions on this notice should be addressed to Surender M. Yepuri, E-mail addresss, surender.yepuri@ferc.fed.us, or telephone (202) 219–2847.

j. Deadline for filing motions to intervene, protest, and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) Lake Dorothy, which has a 998-acre surface area at elevation 2,421 feet; (2) Bart Lake, which has a 250-acre surface area at elevation 986 feet; (3) a lake tap at Bart Lake; (4) a 54-inch-diameter to 96-inch-diameter, 7,500-foot-long tunnel and penstock (combined length); (5) a powerhouse containing a generator unit with a installed capacity of 15 MW and an average annual generation of about 79 GWh; (6) a 138-kV, 3.0-mile-long transmission line connecting the project to the existing submarine transmission line; and (7) appurtenant facilities.

No new access roads will be needed to conduct the studies during the permit phase.

1. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant

desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicants(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–3902 Filed 2–17–99; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6303–7]**

## Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on March 10–12, 1999, at the Hyatt Arlington at Washington's Key Bridge, 1325 Wilson Boulevard, Arlington, Virginia, for the purpose of information exchange with stakeholders on issues related to the Information Collection Rule (ICR) data organization and analysis and treatment and analytical methods research and development for microbial pathogens and disinfection byproducts (DBPs). The meeting will start at 8:30 AM on Wednesday, March 10 and will adjourn on Friday, March 12 at 4:00 PM. The meeting will provide: (1) a framework for ICR data analysis; (2) an overview and schedule of ongoing and future research in support of the Stage 2 microbial pathogen and disinfection byproduct rules; and (3) an open forum to discuss balancing the risk from DBPs and microbial pathogens.

In addition, over the next twelve months, EPA plans to hold other meetings on technical issues related to the development of the Stage 2 microbial pathogens and disinfection byproduct rules. Members of the public who are interested in attending these meetings should contact Eddie Scher, RESOLVE, via e-mail at *escher@resolv.org*, or via fax at 202–338–1264, to be included on the mailing list and to be informed of these meetings.

EPA invites all interested members of the public to participate in the March 10–12 meeting and future meetings to share information related to the Stage 2 microbial pathogens and disinfection byproduct rules. As with all previous meetings in this series, to the extent that is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Approximately 50 seats will be available for the public. Seats will be available on a first-come, first-serve basis.

For additional information about the meeting, please contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260–0676 or by e-mail at rodgers.crystal@epamail.epa.gov.

Dated: February 9, 1999.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 99–3979 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6304–1]**

## Science Advisory Board; Notification of Public Advisory Committee Meeting

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB), will meet on Wednesday, March 3, 1999 at the Madison Hotel, 15th & M Streets, NW, Washington, DC and Thursday, March 4, 1999 in the Science Advisory Board Conference Room (Room M3709), US EPA, 401 M Street, SW, Washington, DC 20460. The hotel telephone number is (202) 862–1600. The meeting will begin at 8:30 am and end no later than 5:00 pm on both days.

### Charge to the Committee

The Science Advisory Board (SAB) has been asked to review and comment on the FY2000 Presidential Budget proposed for EPA's Office of Research and Development (ORD) and the overall Science and Technology (S&T) budget proposed for the EPA. The RSAC will consider how well the budget request:

(a) Reflects priorities identified in the EPA and ORD strategic plans; (b) supports a reasonable balance in terms of attention to core research on multimedia capabilities and issues and to media-specific problem-driven topics; and (c) balances attention to near-term and to long-term research issues. In addition, the Committee will offer its advice on: (d) whether the objectives of the research and development program in ORD and the broader science and technology programs in EPA can be achieved at the resource levels requested; and (e) how can EPA use or improve upon the Government Performance and Results Act (GPRA) structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report.

**FOR FURTHER INFORMATION CONTACT:** Members of the public desiring additional information about the meeting should contact Dr. Jack Fowle, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), Science Advisory Board (1400), Room 3702F, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–8325; fax at (202) 260–7118; or via e-mail at <fowle.jack@epa.gov>. For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 260–4126 or by FAX at (202) 260–7118 or via e-mail at <fields.wanda@epa.gov>.

Materials that are the subject of this review are available from Mr. Mike Feldman of the Office of the Chief Financial Officer or from Mr. Lek Kadeli Office of Research and Development. Mr. Feldman can be reached on (202) 260–1179 or by e-mail at <feldman.mike@epa.gov> and Mr. Kadeli can be reached on (202) 564–6696 or via e-mail on <kadeli.lek@epa.gov>.

### Providing Oral or Written Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Dr. Fowle in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 25, 1999 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. The Science Advisory Board expects that public statements presented at its meetings will not repeat previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments of any length may be submitted to the Committee up until the meeting.

### The Science Advisory Board

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The FY1998 Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

### Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Dr. Fowle at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 9, 1999.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 99–3994 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–838; FRL–6036–4]**

## FMC Corporation; Pesticide Tolerance Petition Filing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF–838, must be received on or before March 22, 1999.

**ADDRESSES:** By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5697 e-mail: tompkins.jim@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–838] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not

include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–838) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**FMC Corporation**

*PP 7F4896*

EPA has received a pesticide petition (PP 7F4896) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clomazone in or on the raw agricultural commodities rice grain and rice straw at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of clomazone in plants is adequately understood. The metabolism of clomazone has been studied in both monocotyledonous and dicotyledonous plant species, such as corn and soybeans. The residue of significance is the parent compound, clomazone. This picture is consistent with plant metabolism studies in other species (cotton, sweet potatoes, and tobacco), all of which have shown a similar metabolic pathway with the residue of significance being clomazone.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of clomazone in or on rice grain, straw, and rice processed parts with a limit of detection that allows monitoring of food for residues at or above the levels proposed in this tolerance. Rice samples are analyzed using gas chromatography - mass selective detection with a limit of quantification of 0.02 ppm, for both straw and grain. Processed rice samples are analyzed using gas chromatography - nitrogen-phosphorous detector with a limit of quantification of 0.05 ppm.

3. *Magnitude of residues*. FMC conducted a residue study (consisting of 18 trials) to determine the magnitude of the residue of clomazone in/on rice grain and straw after treatment with one application of Command 3ME at 0.6 lb. ai/A at pre-plant, pre-emergent, or early post emergent. No detectable residues (detection limit = 0.01 ppm) of clomazone were found in rice grain or straw in any sample, irrespective of location or application method. A second study was conducted, using an excess rate of 1.25 lb. ai/A applied as a pre-emergent treatment, to determine the magnitude of the residue of clomazone in/on rice grain and the extent of concentration into its processed fractions. No detectable residues (detection limit = 0.01 ppm, limit of quantitation (LOQ) = 0.05 ppm) of clomazone were found in rice grain or any of the processed parts analyzed (polished rice, hulls or bran). Since no detectable residues were found in any rice raw agricultural or processed feed/feedstuff commodities from the field studies, animal feeding studies in cow and poultry are not needed.

*B. Toxicological Profile*

1. *Acute toxicity*. The following mammalian toxicity studies have been conducted with clomazone technical (unless noted otherwise) to support registrations and/or tolerances of clomazone.

i. A rat acute oral study with an $LD_{50}$ of 2,077 milligram kilogram (mg/kg) (male) and 1,369 mg/kg (female).

ii. A rabbit acute dermal $LD_{50}$ of > 2,000 mg/kg.

iii. A rat acute inhalation $LC_{50}$ of 6.25 mg/L (male), 4.23 mg/L (female) and 4.85 mg/L (combined sexes).

iv. A primary eye irritation study in the rabbit which showed practically no irritation.

v. A primary dermal irritation study in the rabbit which showed minimal irritation.

vi. A primary dermal sensitization study in the guinea pig which showed no sensitization.

Acute delayed neurotoxicity - clomazone, and its known metabolites, are not structurally related to known neurotoxic substances.

2. *Genotoxicty*. The following genotoxicity tests were all negative: Ames Assay; CHO/HGPRT Mutation Assay; and Structural Chromosomal Aberration. The Unscheduled DNA Synthesis genotoxicity was negative with activation; weakly positive without activation.

3. *Reproductive and developmental toxicity*. A 2-generation reproduction study was conducted in the rat with a parental systemic no observed adverse effect level (NOAEL) of 1,000 ppm (50 milligram kilogram day (mg/kg/day) based on decreased body weight (bwt) and food consumption at 2,000 ppm; and a progeny systemic NOAEL of 1,000 ppm (50 mg/kg/day) based on decreased pup bwt at 2,000 ppm. The reproductive performance NOAEL was > 4,000 ppm which was the highest dose tested (HDT). There was an unexplained decrease in the fertility index during mating of the F1b generation at 4,000 ppm which was not observed in the F1a litter or repeated in the F2 generation. Additionally, there was one F2a pup at 1,000 ppm which had non-functional hindlimbs and one F2b pup at 4,000 ppm which had extended hindlimbs with no flexion at the ankle. These limb abnormalities were not considered treatment-related for the following reasons, i) there was no dose response observed, ii) the findings were not statistically significant, iii) the findings were not repeated at the 1,000 ppm dose level in the F2b litter or found in the F1a or F1b litters, and iv) these findings or related hindlimb abnormalities were

not observed in developmental studies at gavage dose levels up to 100 mg/kg/day in the rat or 240 mg/kg/day in the rabbit.

A developmental toxicity study in rats given gavage doses of 100, 300 and 600 mg/kg/day and with maternal and fetal NOAELs of 100 mg/kg/day. The maternal NOAEL is based on decreased locomotion, genital staining and runny eyes and the developmental NOAEL is based on increased incidence of delayed ossification at 300 mg/kg/day. This study was negative for teratogenicity at all doses tested.

A developmental toxictiy study in rabbits given gavage doses of 30, 240 and 700 mg/kg/day with maternal and fetal NOAELs of 240 mg/kg/day. The maternal NOAEL is based on a decrease in bwt and the developmental NOAEL is based on an increase in the number of fetal resorptions at 700 mg/kg/day. This study was negative for teratogenicity at all doses tested.

In all cases, the reproductive and developmental NOAELs were equal to the parental NOAELs, thus indicating that clomazone does not pose any increased risk to infants or children.

4. *Subchronic toxicity*. In a 90 day feeding subchronic study in mice the NOAEL was 20 ppm (<2.9 mg/kg/day) based on liver cytomegaly at 20 ppm.

5. *Chronic toxicity*. A 12 month feeding study in the dog with a NOAEL of 500 ppm (14.0 mg/kg/day for males; 14.9 mg/kg/day for females) based on increased blood cholesterol and liver weights at 2,500 ppm.

A 24 month chronic feeding/oncogenicity study in the rat with a NOAEL of 100 ppm (4.3 mg/kg/day for males; 5.5 mg/kg/day for females) based on increased liver weights and increased liver cytomegaly at 500 ppm. There were no oncogenic effects observed under the conditions of the study.

A 24 month chronic feeding/oncogenicity study in the mouse with a NOAEL of 100 ppm (15 mg/kg/day) based on an increase in the white blood cell count. There were no oncogenic effects observed under the conditions of the study.

Using the Guidelines for Carcinogen Risk Assessment, it is proposed that clomazone be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. In 24 month feeding/oncogenicity studies in rats and mice at dosages up to 2,000 ppm, there was no evidence of caricnogenicity. The NOAEL in the 24 month feeding/oncogenicity study in the rat was 100 ppm (4.3 mg/kg/day for males and 5.5 mg/kg/day for females). The NOAEL in the 24 month feeding/oncogenicity study in mice was 100 ppm (15 mg/kg/day). The studies were negative for carcinogenic effects at all dosage levels tested.

The reference dose (RfD) for clomazone has been established at 0.043 mg/kg/day. The RfD for clomazone is based on the 24 month feeding/carcinogenicity study in the rat with a NOAEL of 4.3 mg/kg/day and an uncertainty factor of 100.

6. *Animal metabolism*. The metabolism of clomazone in animals is adequately understood. Clomazone degrades rapidly and extensively in rats, goats and poultry to a variety of metabolites which were readily excreted from the body via excreta.

7. *Metabolite toxicology*. No clomazone related metabolite residues have been identified as being of toxicological concern. The residue of significance is parent. Clomazone, has been thoroughly investigated in a full battery of studies including acute, genetic, reproduction developmental and oncogenic tests. These studies have demonstrated that clomazone has low acute toxicity, an overall absence of genotoxicity and does not cause reproductive toxicity, developmental toxicity or carcinogenicity.

8. *Endocrine disruption*. No specific tests have been conducted with clomazone to determine whether the herbicide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. It should be noted, however, that the chemistry of clomazone is unrelated to that of any compound previously identified as having estrogen or other endocrine effects. Additionally, a standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No endocrine effects were noted in any of these studies with clomazone.

*C. Aggregate Exposure*

1. *Dietary exposure—Food*. For purposes of assessing the potential dietary exposure, EPA has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the established tolerances for clomazone. The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels. Dietary exposure to residues of clomazone in or on food will be limited to residues on cabbage (0.1 ppm), cottonseed (0.05 ppm), cucumber (0.1 ppm), succulent peas (0.05 ppm), peppers (0.05 ppm), pumpkins (0.1 ppm), soybeans (0.05 ppm), winter squash (0.1 ppm), summer squash (0.1 ppm), sweet potato (0.05 ppm), snap beans (0.05 ppm) and rice (0.05 ppm). Various feedstuffs from cotton and soybeans are fed to animals, thus exposure of humans to residues might result if such residues carry through to meat, milk, poultry or eggs. No tolerances are proposed for meat, milk, poultry or egg since no detectable residues from clomazone have been found in the past or were found in any rice raw agricultural commodity or processed animal feed products. As noted above, in conducting this exposure assessment, EPA has made very conservative assumptions, i.e., 100% of crops treated will contain clomazone residues and those residues would be at the level of the tolerance. It is FMC's opinion that these assumptions result in an overestimate of human exposure.

2. *Drinking water*. It is unlikely that there will be exposure to residues of clomazone through drinking water supplies. A field mobility study was conducted at a loamy sand location. Clomazone was found only in the top 0-1 ft. soil samples during the 61 day study period. No clomazone residue (<0.02 ppm) was detected in the deeper soil levels (1-2, 2-3 and 3-4 ft.). Mathematical modeling (PESTANS) was also applied to the loamy sand site. PESTANS showed very limited potential for movement of clomazone. That is, clomazone did not move lower than the top seven inches of soil over the first 30 days with 10 inches of precipitation and 100% recharge. Predictions were also obtained for other soil types including sand, sandy loam, silt loam and clay loam. These outputs yielded a similar conclusion, that clomazone has low potential for downward movement with its highest mobility being sand. The field leaching study and PESTANS modeling results were further confirmed by field dissipation studies conducted in silt loam (IL and AR), sandy loam (NJ), sandy clay loam (NC), silty clay loam (IA) and silt loam (LA) soils. Results of these studies demonstrated that clomazone tended to remain in the top soil layer (0-6''), with residues in the 6-12'' layer being at or below method sensitivity (0.10 ppm) and generally declining to non-detectable. An aquatic field dissipation study conducted at locations in AR and TX, having silty

clay loam and loam soils characteristics respectively. Soil samples were taken over a period of 12 months following the herbicide application. Detectable residues of clomazone were found only in the 0-6'' horizon. Should movement into surface water occur, potential for clomazone residues to be detected in drinking water supplies at significant levels is minimal. Results from an aquatic field dissipation study (static water situation) demonstrated half-lives of 12-13 days, indicating even shorter durations are likely under flowing water situations. Accordingly, there is no reasonable expectation that there would be an additional incremental aggregate dietary contribution of clomazone through groundwater or surface water.

3. *Non-dietary exposure*. Clomazone is only registered for use on food crops. Since the proposed use on rice is consistent with existing registrations, there will be no non-dietary, non-occupational exposure.

*D. Cumulative Effects*

Clomazone is an isoxazolidinone herbicide. No other registered chemical exists in this class of chemistry. Therefore, given clomazone's unique chemistry low acute toxicity, the absence of genotoxic, oncogenic, developmental or reproductive effects, and low exposure potential (see sections A and C), the expression of cumulative human health effects with clomazone and other natural or synthetic pesticides is not anticipated.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicology data, it is concluded that aggregate exposure due to existing registered uses of clomazone will utilize less than one of the RfD for the U.S. population. Additionally, an analysis concluded that aggregate exposure to clomazone adding rice at a 0.05 ppm tolerance level will utilize 0.17% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of clomazone, including all anticipated dietary exposure.

2. *Infants and children*. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete (See section B.3). Further, for clomazone, the NOAEL in the 2 year feeding study which was used to calculate the RfD (0.043 mg/kg/day) is already lower than the NOAELs from the reproductive and developmental studies by a factor of more than 10-fold. Therefore, it can be concluded that no additional uncertainty factors are warranted and that the RfD at 0.043 mg/kg/day is appropriate for assessing aggregate risk to infants, children as well as adults.

Using the conservative exposure assumptions described above, FMC has concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of clomazone in/on rice for non-nursing infants (< 1 year old), the population subgroup most sensitive, is 0.15 and the percent of the RfD that will be utilized by the children (1-6 years old) population subgroup is 0.037. The percent of the RfD utilized for infants and children for rice plus all other current clomazone tolerances is 0.640 and 0.286 respectively.

Based on the above information, FMC has concluded that there is a reasonable certainty that no harm will result to infants, children or adults from dietary food consumption exposure to clomazone residues from either rice foods alone or rice foods plus all other clomazone treated human dietary food sources.

*F. International Tolerances*

There are Codex residue limits for residues of clomazone in or on cottonseed, oilseed, peas, potatoes, rape, rice, soybeans, sugarcane, and tobacco.

[FR Doc. 99–4025 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–859; FRL–6059–9]**

## Notice of Filing of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF–859, must be received on or before March 22, 1999.

**ADDRESSES:** By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** The product manager listed in the table below:

| Product Manager | Office location/telephone number | Address |
|---|---|---|
| Melody A. Banks (PM 03). | Rm. 205, CM #2, 703–305–5413, e-mail:banks.melody@epamail.epa.gov. | 1921 Jefferson Davis Hwy, Arlington, VA |
| Joseph M. Tavano ..... | Rm. 214, CM #2, 703–305–6411, e-mail: tavano.joseph@epamail.epa.gov. | Do. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–859] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

## List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

## Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### 1. Nihon Nohyaku Co., Ltd.

*PP 5E4435*

EPA has received a pesticide petition (PP 5E4435) from Nihon Nohyaku Co., Ltd., 2-5, Nihonbashi 1-Chome, Chuo-ku, Tokyo 103, Japan, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an import tolerance for residues of fenpyroximate tert-butyl (E)-α-(1,3-dimethyl-5-phenoxypyrazol-4-ylmethyleneamino oxy)-p-toluate, CASRN 134098-61-6 in or on grapes and hops (green and dried). The proposed analytical method involves gas chromatography using nitrogen-sensitive detection against authentic standards for the parent and its two main metabolites. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has completed a partial review of the sufficiency of the submitted data at this time. Nihon Nohyaku Co., Ltd. has submitted supplemental information to EPA which EPA believes it needs to review and evaluate before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. Radiolabel metabolism studies, using $^{14}C$ labeled fenpyroximate, were conducted with grapes, apples, and citrus. Radiolabeling was at two positions (in separate study series), in the pyrazole ring of the molecule and in the benzyl ring of the molecule. The studies established that: Fenpyroximate applied to growing grape vines leads to parent and metabolites being found mostly on leaves with less than 10% of the total residue being found in the grapes and generally less than 1% of the total residues being found in grape juice. In grapes, the predominant metabolites were the *Z-isomer* of the parent, terephthalic acid, terephthaldehydic acid, and species resulting from cleavage of the tert-butyl group and of the imino linkage. Fenpyroximate applied to apple trees leads to parent and metabolites being found mostly on leaves with less than 10% of the total residue being found in the grapes and generally less than 1% of the total residues being found in apple juice. In grapes, the predominant metabolites were the *Z-isomer* of the parent, terephthalic acid, terephthaldehydic acid, and species resulting from cleavage of the tert-butyl group and of the imino linkage. Application of fenpyroximate to citrus gave similar results. Comparison of the plant metabolites to metabolites in mammalian metabolism studies did not reveal novel metabolites in plants which were not seen in mammals. Nihon Nohyaku believes the results of these plant metabolism studies establish that: (i) fenpyroximate metabolism is similar among the different plant species studies; (ii) metabolism in hops will be similar to that in grapes, apples, and citrus; (iii ) the dietary safety of the various plant metabolites of fenpyroximate is well addressed by the animal toxicology data on fenpyroximate since there do not appear to be novel plant metabolites not seen in mammalian metabolism; and, (iv) the tolerance expression for fenpyroximate TTR can be given as:

TTR = (parent + *Z-isomer*) x 3

where the factor of 3 accounts for the highest levels of TTR (including non-extractable residues) seen in the plant metabolism studies in relation to the combined parent + *Z-isomer* residues.

2. *Analytical method*. An adequate analytical method for detecting fenpyroximate parent and *Z-isomer* residues in plants is available. The method has been validated by several laboratories, is a standard European multi-residue method (DFG-S19: Manual of Pesticide Residue Analysis DFG, Deutsche Forschungsgemeinschaft Pesticides Committee), and EPA will independently validate this method as part of EPA's continued review of this petition. Analytical method for detecting fenpyroximate parent and *Z-isomer* residues in plants is available. In brief, plant material is extracted with acetone/water, maintaining an acetone/water ratio of 2:1 v/v (taking into account, also, the natural water content of the plant material). The extract is saturated with sodium chloride and then diluted with dichloromethane, resulting in the separation of excess water. The evaporative residue of the organic phase is cleaned up by gel permeation chromatography on Bio Beads S-x3 polystyrene gel (or equivalent) using a mixture of cyclohexane and ethyl acetate (1+1) as eluant and an automated gel permeation chromatograph. The residue containing fraction is concentrated and after supplemental clean-up on a small silica

gel column is analyzed by gas chromatography using a widebore capillary column and a nitrogen sensitive detector. Limits of detection are: (LOD) (i) 0.02 milligram/kilogram (mg/kg) for grapes, cider, and wine; and, (ii) 0.05 mg/kg for green hops; and, (iii) 1 mg/kg in dried hops. Limits of quantitation (LOQ) are: (i) 0.05 mg/kg for grapes, cider, and wine; and, (ii) 0.1 mg/kg for green hops; and, (iii) 2 mg/kg in dried hops.

3. *Magnitude of residues*. Four field trials were conducted for hops, in each of which residues in dried and green hops were determined. These trials were all conducted in Germany since it is the predominant growing area for hops and registration in that country is imminent. Czechoslovakia is the only other significant exporter of hops to the United States but fenpyroximate registration in Czechoslovakia is not imminent nor has Nihon Nohyaku filed for same at this time. Hops growing areas are, in any case, quite restricted in regard to their micro-climates. Therefore, essentially identical environmental conditions of degree-days, rainfall, and hours of daylight are to be found from one hops growing region to another. As such, Nihon Nohyaku believes that magnitude of the residue data from Germany would adequately represent residues on Czech hops should registration in Czechoslovakia someday be sought.

Twenty-six field trials were conducted in wine grapes, with eleven different grape varietals. These trials were conducted in Germany, Italy, and France since these are major wine producing countries and are major exporters of wines to the United States. No trials data from Spain, another major wine exporter to the United States, or Portugal, a minor exporter, were submitted. Nihon Nohyaku believes that micro-climate conditions in the south of France, and in Italy, which have mediterranean climates, are adequately representative of growing condition in Spanish, and Portuguese vineyards. As below noted: (i) quantifiable residues of fenpyroximate were found in only one juice sample from treated grapes and this was just at the LOQ = 0.02 ppm; (ii) residues in all other juice and in all wine samples were less than the LOQ;, and (iii) there is, therefore, no reasonable basis to expect that quantifiable residues would occur in wines from any country.

In the hops trials, residues in green hops ranged from 1.1 ppm at 7 days post-application and ranged from 0.8 ppm to 3.2 ppm at 21 days post-application (i.e., at harvest). In dried hops residue levels ranged from 2.1 ppm to 6.4 ppm at 21 days post-application (i.e., at harvest with immediate on site drying).

In the grapes trials, residues in grapes ranged from > 0.02 ppm (i.e., non-detect) to 0.41 ppm at 7 days post-application and ranged from > 0.02 ppm (i.e., non-detect) to 0.23 ppm at 36 days post-application (i.e., at harvest). The highest residue level found in grapes was 0.57 ppm in a 14 day post-application sample in one trial. In these trials, a 5-fold range of application rates was used. The label rate recommendation on grapes is 60 - 120 g AI/hectare. The application rates used in these grape trials was from a low of 60 g AI/hectare to a high of 360 g AI/hectare. At from 28 to 36 days post-application mean residues in grapes were > 0.02 ppm at the lowest application rate and were 0.15 - 0.23 ppm at the highest application rates. Residue levels were determined in juice and wines from grapes treated at from 120 to 360 g AI/hectare. In one juice sample residues were just at the (LOQ = 0.02ppm). Resudues in all other juice and in all wine samples were less than the LOQ.

*B. Toxicological Profile*

1. *Acute toxicity*. Technical fenpyroximate (99+% active ingredient) is moderately toxic by the oral route, with a rat acute oral LD50 of 480 mg/kg (95% CI: 298 <> 662) in males, 245 mg/kg (95% CI: 167 <> 323) in females, and 350 mg/kg (95% CI: 272 <> 428) for males and females combined (MRID 43560501). These LD50 values place fenpyroximate into EPA's acute oral toxicity Category II (signal word: WARNING). Data on acute dermal toxicity, acute inhalation toxicity, eye irritation, skin irritation, and dermal sensitization were not submitted since these are not relevant to the dietary safety ecaluation required in support of an import tolerance.

2. *Chronic and subchronic toxicity*. The following studies were submitted by Nihon Nohyaku: subchronic toxicity in rats (MRID 43429501), chronic toxicity rats (MRID 43560502), subchronic toxicity in dogs (MRID 43429502), and chronic toxicity in dogs (MRID 434329503).

i. *Rat subchronic toxicity*. Fenpyroximate (technical grade) was administered to ten rats/sex/dose in the diet at dose levels of 0, 20, 100 or 500 ppm (average 1.47, 7.43, or 36.9 mg/kg/day; 0 ppm =control) for 13 weeks. No treatment related effects were observed in the 20 ppm groups. Both sexes in the 100 ppm and 500 ppm groups had impaired growth performance, reduced food intake, and decreased body weights and body weight gains. The decrease in body weight gain was dose related. Males in the 100 ppm group had lower white cell counts. In males from the 500 ppm group, hematocrit, hemoglobin, and red cell counts were higher and white cell counts were lower than in controls. In females from the 500 ppm group, hematocrit, hemoglobin, red cell counts, and platelet counts were higher than in controls. Total plasma proteins were reduced in the 500 ppm males and in the 100 and 500 ppm females. Females in the 500 ppm group had lower plasma acetyl- and butyryl-cholinesterase activity and elevated alkaline phosphatase. Males in the 500 ppm group had lower urine volume and pH values. Various treatment related gross pathology changes were noted in the 500 ppm group for both sexes. Micropathology changes noted in the 100 ppm and 500 ppm groups were limited to minimal hepatocytic hypertrophy seen in both sexes. EPA has already reviewed this study and concluded that: (i) the study is acceptable; and, (ii) the no-observed adverse effect level (NOAEL), and lowest-observed adverse effect levels (LOAEL) in this study were 20 ppm (1.3 mg/kg/day) and 100 ppm (6.57 mg/kg/day) respectively based on reduced body weight gain in both sexes.

ii. *Rat chronic toxicity*. A combined oncogenicity/chronic toxicity study (Guideline 83-5) was conducted. For the chronic toxicity phase of this study, fenpyroximate (technical grade) was administered to 30 rats/sex/dose in the diet at dose levels of 0, 10, 25, 75, or 150 ppm (male average: 0.40, 0.97, 3.1, or 6.2 mg/kg/day; Female average: 0.48, 1.2, 3.8, or 7.6 mg/kg/day; 0 ppm = control) for 104 weeks. Chronic toxicity was observed in males and females receiving 75 or 150 ppm. This consisted of depressed growth rate and food efficiency. No treatment related effect on general condition, hematology, clinical chemistries, urinalysis, ophthalmology examinations, gross pathology, or micro pathology were observed. EPA has already reviewed this study and concluded that: (i) the study is acceptable; and, (ii) the NOAEL, and LOAEL in this were 25 ppm (0.97 mg/kg/day in males, and 1.2 mg/kg/day in females), and 75 ppm (3.1 mg/kg/day in males and 3.8 mg/kg/day in females) respectively based on reduced body weight gain in both sexes.

iii. *Dog subchronic toxicity*. Fenpyroximate (technical grade) was administered to four beagle dogs/sex/dose by capsule at dose levels of 2, 10, or 50 mg/kg/day plus a vehicle control group for 13 weeks. Two 50 mg/kg/day females were sacrificed in extremis

during weeks 4 or 5 after a period of appetite loss and body weight loss. Both sexes at all treatment levels exhibited slight bradycardia and a dose-dependent increase in diarrhea. Emaciation and torpor were observed in the 2 mg/kg/day females and in both sexes at 50 mg/kg/day. Emesis was observed in both sexes at 10 and 50 mg/kg/day. Reduced body weight gain and body weight was observed in all female treatment groups and in the 50 mg/kg/day. These effects on weight and weight gain were significant only at the mid and high doses for females. Decreased blood glucose and white cell counts were observed in the 10 and 50 mg/kg/day males. Prothrombin times and blood urea levels were increased in the 50 mg/kg/day females. Increased relative adrenal gland and liver weights were observed in the 50 mg/kg/day males, and females. The 50 mg/kg/day females exhibited depleted glycogen in their hepatocytes and a fine vacuolation of the cellular cytoplasm in the renal medullary rays. EPA has already reviewed this study and concluded that: (i) the study is acceptable; and,(ii) a NOAEL was not established and the LOAEL in this study was 2 mg/kg/day based on slight bradycardia and an increased incidence of diarrhea in both sexes and, in females only, reduced body weight gain, reduced body weight, reduced food consumption, emaciation, and torpor.

iv. *Dog chronic toxicity*. Fenpyroximate (technical grade) was administered to four beagle dogs/sex/dose by capsule at dose levels of 0.5, 1.5, 5.0, or 15 mg/kg/day plus a vehicle control group for 52 weeks. Dogs of both sexes in all treatment groups had 26% - 45% lower blood cholesterol concentrations compared to controls. No accompanying changes in liver function or pathology were noted. There was a more frequent occurrence of diarrhea in males of the 5 and 15 mg/kg/day groups. Males in the 15 mg/kg/day dose group had reduced body weight, consumed less food, and exhibited bradycardia during the first 24 hours after dosing. Aside from lowered cholesterol levels, the only effect noted in females was an increased incidence of diarrhea in the 5 and 15 mg/kg/day groups. No treatment related changes in ophthalmology, hematology, urinalysis, organ weights, electrocardiogram, clinic chemistry (aside from lower cholesterol), and in gross or micro pathology were observed. Relative prostate weights were elevated in all male treatment groups relative to contols. EPA has already reviewed this study and concluded that: (i) the study is acceptable; and, (ii) the NOAEL, and LOAEL in this study were 5 mg/kg/day, and 15 mg/kg/day, respectively, for both males, and females based on diarrehea, bradycardia decreased cholesterol, body weight and food consumption in males and on vomiting, diarrhea, excessive salivation, and decreased cholesterol in females. EPA has inquired as to the mechanism of the prostate weight effect and Nihon Nohyaku has recently sumitted historical control data and other information which demonstrate that in this study the control group has an unusually low mean relative prostate weight and that no fenpyroximate related effect on relative prostate weight in fact occurred in this study.

3. *Oncogenicity*. The following studies were submitted by Nihon Nohyaku: oncogenicity in rats (MRID 43560502), and oncogenicity in mice (MRID 43560503).

i. *Rat oncogenicity*. A combined oncogenicity/chronic toxicity study (Guideline 83-5) was conducted. For the oncogenicity phase of this study, fenpyroximate (technical grade) was administered to 50 rats/sex/dose in the diet at dose levels of 0, 10, 25, 75, or 150 ppm (Male average: 0.40, 0.97, 3.0, or 6.2 mg/kg/day; Female average: 0.49, 1.2, 3.8, or 8.0 mg/kg/day; 0 ppm = control) for 104 weeks. Chronic toxicity was observed in males, and females receiving 75 or 150 ppm. This consisted of depressed growth rate and food efficiency. No treatment related effect on general condition, hematology, clinical chemistries, urinalysis, ophthalmology examinations, gross pathology, or micro pathology were observed. There were no treatment related increases in tumor incidence when compared to controls. EPA has already reviewed this study and concluded that: (i) the study is acceptable; and, (ii) fenpyroximate was not oncogenic in the rat in this study.

ii. *Mouse oncogenicity*. Fenpyroximate (technical grade) was administered to 50 mice/sex/dose in the diet at dose levels of 0, 25, 100, 400, or 800 ppm (Male average: 2.4, 9.5, 38, or 70 mg/kg/day; Female average: 2.5, 10, 42, or 73 mg/kg/day; 0 = control) for 104 weeks. mption were dose related in magnitude and were significant throughout the study at 400 or 800 ppm and were significant during weeks 8 - 12 at 100 ppm. No other treatment related effects of biological significance were observed. There were no treatment related increases in tumor incidence when compared to controls. EPA has already reviewed this study and concluded that: (i) the study is acceptable; (ii) fenpyroximate was not oncogenic in mice in this study; and, (iii) the NOAEL, and the LOAEL in this study were 25 ppm (2.4 mg/kg/day in males, and 2.5 mg/kg/day in females) and 100 ppm (9.5 mg/kg/day in males, and 10 mg/kg in females) respectively based on decreased body weight and food comsumption.

4. *Developmental effects*. The following studies were submitted by Nihon Nohyaku: developmental toxicity in rats (MRID 43429505), and developmental toxicity in rabbits (MRID 43429504).

i. *Rat developmental toxicity*. Fenpyroximate was administered to 22 CD Sprague Dawley female rats per dose group, via gavage dosing, at levels of 0, 1.0, 5.0, or 25 mg/kg/day from days 6 - 15 of gestation. Maternal body weight and food consumption were significantly depressed at 25 mg/kg/day on days 6 - 11 of gestation. There were no treatment related effects on mortality, clinical signs, cesarean parameters, or fetal observations at necropsy at any dose level. Potential developmental effects were characterized as an increase in the litter incidence of additional thoracic ribs which was most marked in the 25 mg/kg/day group. EPA has already reviewed this study and concluded that: (i) the study is acceptable; (ii) the maternal NOAEL, and LOAEL are 5.0 mg/kg/day and, 25 mg/kg/day respectively based on the maternal toxicity data; and, (iii) the NOAEL, and LOAEL for developmental toxicity in this study were 5.0 mg/kg/day, and 25 mg/kg/day respectively based on the increased fetal incidence of thoracic ribs. EPA has requested more detailed historical control data to assess whether the increased incidence of thoracic ribs is indeed treatment related and Nihon Nohyaku has recently submitted these data for review.

ii. *Rabbit developmental toxicity*. Fenpyroximate was administered to 15 New Zealand white female rabbits per dose group, via gavage dosing, at levels of 0, 1.0, 2.5, or 5.0 mg/kg/day from days 6 - 19 of gestation. In its initial review of this study, EPA concluded that there were no treatment related effects on maternal body weight, mortality, clinical signs, cesarean parameters, or fetal observations at necropsy at any dose level. Potential developmental effects were characterized as an increase in retinal folding in the 5 mg/kg/day group. EPA has already reviewed this study and concluded in its initial review that: (i) the study is supplemental because overt maternal toxicity had not been demonstrated; (ii) the maternal NOAEL, and LOAEL are both > 5.0 mg/kg/day the highest dose tested (HDT); and, (iii) the NOAEL, and LOAEL for

developmental toxicity in this study were both > 5.0 mg/kg/day the HDT. EPA has requested more detailed historical control data on retinal folding in the performing laboratory, a combined analysis of unilateral and bilateral retinal folding in this study, and a justification for dose selection in this study (in the form of the range finding data and other re-analysis which may be developed). Nihon Nohyaku has recently submitted the requested historical control and range finding data, a combined analysis of unilateral and bilateral retinal folding, and a correlation analysis of weight losses and decreases in fecal output intreated dams for review. Nihon Nohyaku's evaluation of these additional data indicates that bilateral folding was not a treatment effect, falling into the range of historical controls, and that significant body weight decreases occurred in the 5 mg/kg/day group dams during a period critical to fetal organ development, this decrease exhibited a dose trend in magnitude of the effect, with no effect at 1 mg/kg/day, and that this effect on body weight correlated with a drop in fecal output but not in feed consumption. Nihon Nohyaku believes that the NOAEL for maternal toxicity should be 2.5 mg/kg/day; the LOAEL for maternal toxicity should be 5 mg/kg/day; the NOAEL for developmental effects should be 5 mg/kg/day HDT; and that maternal toxicity has been demonstrated and the dose selection in this study was reasonable.

5. *Reproductive effects.* A 2-generation reproductive effects study with fenpyroximate was performed in the rat (MRID 43429506). In this study the technical form of fenpyroximate was used. There were three dose groups (10, 30, and 100 ppm) and a control group. There were 24 males, and 24 females per group in the F0 generation and 24 per sex per group were selected to form the $F_1$ breeding generation. The age of the parent animals at the commencement of the study was approximately 6 weeks and the weight range was 168-217 g for males and 128-167 g for females. The $F_0$ generation was treated continuously by the dietary route throughout the study and until termination after the breeding phase. After 14 weeks of treatment, F0 animals were paired to produce F1 litters. The $F_1$ generation was treated from weaning until termination after the breeding phase. Both sexes received 14 weeks treatment before pairing to produce the $F_2$ litters. For each breedingcycle, a 7 day mating period was used. Females not mated within the mating period were then mated for an additional 7 day period with a different male, of a proven mating ability, from the same treatment group. The study was continued through weaning of the $F_2$ generation. During general, daily observations the condition of $F_0$ and $F_1$ males, and females was similar to that of the controls throughout the study. The general condition of the $F_2$ males and females up through weaning was similar among all group. The litter size, sex ratio, the offspring viability indices before and after culling and the rate of development (pinna unfolding, hair growth, tooth eruption and eye opening) were not adversely affected by treatment in the $F_1$ and $F_2$ generations. Macro- and micro-pathology examinations at sacrifice revealed no treatment related changes were in the $F_0$ animals, the $F_1$ animals, the $F_2$ offspring that were culled on day 4 post-partum, nor in the $F_2$ offspring at termination after weaning. Signs of toxicity which were observed in the high dose group included:

i. *Males (Fo).* Body weight was statistically, slightly lower, in the high dose group (100 ppm) compared to controls. Food consumption was reduced for the majority of the period before pairing.

ii. *Females (Fo).* Prior to pairing, at commencement of gestation, during gestation, and on day 1 post-partum the weight gain of females at the high dose was significantly lower than that of controls (P= < .05).

iii. *Offspring.* Body weight of male offspring at the high dose was significantly reduced at commencement of the F1 generation and subsequent weight gain to termination was reduced compared with the concurrent control group (P= <.001). Food consumption in the period before pairing was marginally reduced. The testes weight relative to body weight of $F_1$ males showed a significant increase at the high dose. In females, weight gain was slightly reduced with the result that absolute body weight was significantly reduced at the commencement of gestation (p =< 0.05), was further reduced during gestation, but recovered during lactation. EPA has already reviewed this study and concluded that: (a) the study is acceptable; (b) there were no adverse effects on reproductive performance; and, (c) the NOAEL, and LOAEL for reproductive and systemic toxicity in this study were 30 ppm (2.44 mg/kg/day) and, 100 ppm (8.60 mg/kg/day) respectively based on reduced pup weights after birth.

6. *Genotoxicity*. Fenpyroximate was tested for genotoxic effects in several standard test systems with the following results:

| Test | Endpoint | Result |
|---|---|---|
| Ames test (S. typhimurium) | mutagenicity | negative |
| Chinese Hamster V79 Forward Mutation | mutagenicity | negative |
| Cultured Human Lymphocytes | chromosome damage | negative |
| Mouse Micronucleus Test | chromosome damage | negative |
| DNA Repair Test (RecA-Assay) | non-specific gene damage | negative |
| Unscheduled DNA Synthesis | non-specific gene damage | negative |

On the basis of the above genotoxicity test battery results, Nihon Nohyaku Co., Ltd. concludes that fenpyroximate is not mutagenic, clastogenic, or otherwise genotoxic.

7. *General metabolism*. In support of the import tolerance for fenpyroximate, severalmammalian metabolism studies were submitted by Nihon Nohyaku Co., Ltd.. These studies are:

1. *MRID 43560504*. Metabolism and Disposition of Benzyl-$^{14}$C NNI-850 in Rats HLA 6283-101

2. *MRID 43560505*. Metabolism and Disposition of Pyrazole-$^{14}$C NNI-850 in Rats HLA 6283-102

3. *MRID 43429513*. Pharmacokinetics of a Benzyl-$^{14}$C NNI-850 in Rats (High and Low Doses) HLA 6283-103 and Pharmacokinetics of a Pyrazole-$^{14}$C NNI-850 in Rats (High and Low Doses) HLA 6283-103 (note: reports for two studies submitted as one combined volume under a single MRID)

These studies are summarized, here, in aggregate so as to provide a more comprehensive picture of the mammalian metabolism of fenpyroximate.

The test article was purified fenpyroximate (99+% purity) with $^{14}$C radio-labeled fenpyroximate. Labeling was in either the pyrazole or the benzyl rings of the compound so as to assure

detection of metabolites resulting from cleavage of the imine linkage between these two ring systems. Young, healthy Sprague Dawley rats were used. Five animals were assigned per sex/time point group for pharmacokinetic studies and for time course determinations of urinary and fecal metabolites. Three animals per sex/time point were assigned for tissue distribution as a function of time studies. Both low and a high doses were tested (2 mg/kg, and 400 mg/kg). Test article administration was by the oral route for all dose groups. The sample collection schedules (blood, urine, and feces) for pharmacokinetics (absorption and elimination) were at 1, 3, 6, 9, 12, 18, 24, 48, 72, 96, 120, 144, and 168 hours post-dose. For metabolism and distribution, sample collection was as follows: urine and feces at the same time points as for pharmacokinetics; and, tissues taken at 24, 96, and 120 hours. Expired air was not collected since preliminary study showed negligible excretion of the label by this route. The results of these studies were as follows:

i. *Pharmacokinetics*—a. *Pyrazole labeled*. The half-life of elimination from blood for the low dose group was 8.9 hours (M & F) and the time to peak blood levels was 11.0 (M) - 11.4 hours (F). Mean maximum concentrations were 0.152 µg equivalents/g (M) and 0.176 µg eq./g (F). AUCs for males and females were 3.49 and 3.82 µg-hr/ml respectively. By 72 hours the level of label in blood declines to below detectable levels.

The half-life of elimination from blood for the high dose group was 48.7 hours (M), and 45.3 hours (F). The time to peak blood levels was 90 (F) -101 hours (M). Mean maximum concentrations were 4.67 µg eq./g (M), and 4.69 µg eq./g (F). AUCs for males and females were 377, and 411 µg-hr/ml respectively. By 216 hours the level of label in blood declines to below detectable levels.

b. *Benzyl labeled*. The half-life of elimination from blood for the low dose group was 6.1 hours (M), and 7.9 hours (F). Time to peak blood levels was 7.2 (F) - 7.8 hours (M). Mean maximum concentrations were 0.097 µg eq./g (M), and 0.181 µg eq./g (F). AUCs for males and females were 1.80, and 3.01 µg-hr/ml respectively. By 48 hours the level of label in blood declines to below detectable levels.

The half-life of elimination from blood for the high dose group was 47.0 hours (M), and 35.4 hours (F). The time to peak blood levels was 28.2 (M) -86.4 hours (F). Mean maximum concentrations were 5.10 µg eq./g (M), and 8.88 µg eq./g (F). AUCs for males and females were 425, and 728 µg-hr/ml respectively. After 168 hours the level of label in blood declines to below detectable levels.

ii. *Metabolism*—a. *Pyrazole labeled*. Fenpyroximate was not metabolized to volatiles to any significant degree. The majority of label is excreted in the feces (69.7% - 84.8% for males, and females). Urinary excretion accounts for from 10.8% - 17.8% of the label. Thus, feces and urine are the major routes of excretion for fenpyroximate. Tissue did not accumulate fenpyroximate or its metabolites to any great extent. The greatest levels of label were in liver, kidneys, heart, and urinary bladder. These tissues had much higher levels of label than did fat. In blood, nearly all of the label is in the plasma.

b. *Benzyl labeled*. Fenpyroximate was not metabolized to volatiles to any significant degree. The majority of label is excreted in the feces (77.9% - 91.6% for males, and females). Urinary excretion accounts for from 9.47% - 13.8% of the label. Thus, feces and urine are the major routes of excretion for fenpyroximate. Tissue did not accumulate fenpyroximate or its metabolites to any great extent. The greatest levels of label were in liver, kidneys, adrenals, and fat (to a lesser degree). In blood, nearly all of the label is in the plasma.

c. *Overall*. The major urinary metabolites of fenpyroximate were 1,3-dimetyl-5-phenoxypyrazole-4-carboxylic acid, 4-cyano-1-methyl-5-phenoxypyrazole-3-carboxylic acid, and terephthalic acid. In feces, there was a large amount of fenpyroximate itself with major fecal metabolites being (E)-α-(1,3-dimethyl-5-phenoxypyrazol-4-ylmethyleneamino-oxy)-p-toluic acid, (Z)-α-(1,3-dimethyl-5-phenoxypyrazol-4-ylmethyleneamino-oxy)-p-toluic acid, and (E)-2-4-(1,3-dimethyl-5-phenoxypyrazol-4-ylmethyleneamino-oxymethyl)benzoyloxy-2-methypropionic acid. The mammalian metabolism of fenpyroximate appears to proceed by oxidation of the tert-butyl and pyrazole-3-methyl groups, by p-hydroxylation of the phenoxy moiety, by N-demethylation, by hydrolysis of the ester and methyleneamino bonds, by conjugation, and by E/Z isomerization.

8. *Oral reference dose (RfD)*. In 1997, an oral RfD of 0.01 mg/kg/day for fenpyroximate was recommended by EPA. This is based on the 2 year rat feeding study in which the NOAEL for males, and females was 0.97 mg/kg/day, and 1.21 mg/kg/day (respectively), and application of a 100-fold uncertainty factor (UF).

*C. Aggregate Exposure*

1. *Dietary exposure—Food*. Nihon Nohyaku Co., Ltd. has submitted residue data and information on consumption of end-use processed foods from grapes, and hops (wine, and beer) which allow for estimation of the percent RfD utilization at the upper 99th percentile of consumption for beer or wine. These estimates are as follows:

i. *Wine*. According to data publicly available from the Department of Commerce and USDA, imports of wine to the United States, are in the range of 52.8 - 58.1 million gallons (from Italy, France, Spain, Germany, and Portugal combined) in comparison to an annual wine consumption in the United States of 721 million gallons per year. Thus, imported wines account for only 8% of wine consumption. USDA food and beverage consumption data establish that at the upper 99th percentile, male wine drinkers consume 0.89 L wine per day and females wine drinkers consume 0.45 L wine per day. Data submitted by Nihon Nohyaku establish that fenpyroximate residues in wines made from treated grapes are less than 20 parts per billion (ppb), and that TTR in grapes is at most 3-fold the measured fenpyroximate level (i.e., TTR will be less than 60 ppb in wines). Therefore, assuming that 100% of the grapes going into such imported wines are fenpyroximate treated (a deliberate over-estimate), the RfD percent utilization at the upper 99th percentile for wine consumption is 0.61% for males, and 0.36% for females. Nihon Nohyaku Co.,Ltd. has noted that wine drinkers at the upper 99th percentile will be less likely to consume imported wine than will wine drinkers at the median consumption levels. At median consumption levels (approximately 5-fold lower than the upper 99th percentile consumption) the percent RfD utilization is 0.12% for male wine drinkers, and 0.072% for female wine drinkers.

ii. *Beer*. Data available from the Hop Growers of America, Inc. indicate: (a) that United States hops production ranges, annually, from 75 million to 79 million pounds, of which between 43-million and 51 million pounds are exported annually; and, (b) that United States imports of hops from Germany are a maximum of 7.9-milion lbs/year, and from Czechoslovakia are a maximum of 2.0 million lbs/year (the combined maxima equal 9.9 million lbs/year). Therefore, domestic hops utilized in the United States are a minimum of 24 million lbs/year against a maximum of 9.9 million lbs/year of imported hops and an annual hop use of 34 million lbs/

year. This means that at most 29% of beer which is domestically brewed will contain imported hops. The exposure contribution of imported beer can be similarly estimated from BATF and USDA data which are publicly available. Annual production of domestic beer is 190-198 million barrels (31 gallons each = 6.13 billion gallons) with a total value of 13.6 - 14.3 billion. Of this, exports account for approximately 0.08 billion, meaning that nearly all domestic beer is consumed in the United States. Annual consumption of beer in the United States is 8.56 billion gallons, of which as above-noted, 6.13 billion gallons are produced domestically. Thus, comparing the domestic production to the annual consumption gives an estimate for imported beer as 28% of annual beer consumption. Imported beer in the United States derives primarily from the Netherlands, Canada, and Mexico with lesser contributions from other countries (USDA data). For purposes of exposure assessment, a prudent ''worst case'' assumption is that European derived beer is 33% of total imported beer, the balance being from Canada, Mexico, and other sources. Thus, European derived imported beer can be estimated to account for not more than 9.2% of beer consumed in the United States. Combining consumption of domestic beer utilizing imported hops (maximum of 29% of beer consumed), and the consumption of European derived imported beer (maximum of 9.2% of beer consumed) provides that not more than 38% of beer consumed has any potential to contain fenpyroximate residues as a result of approval of this petition. Hopping rates in beer production are less than 0.001 parts by weight in brew water (Hop Growers of America data) which means that fenpyroximate residues in hops will be diluted by at least 0.001 fold in finished beer. At the tolerance of 10 ppm in dried hops (which are what is used in brewing) and using the TTR fenpyroximate ratio of 3x, TTR in dried hops would be 30 ppm and would be not more than 30 ppb in finished beer. USDA food and beverage consumption data establish that at the upper 99th percentile, male beer and ale drinkers consume 2.76 L beer or ale per day, and females beer and ale drinkers consume 1.44 L beer or ale per day. Therefore, applying the factor of 38% for the maximum percent of beer which could contain fenpyroximate residues, the RfD percent utilization at the upper 99th percentile for beer consumption is 4.5% for males, and 2.7% for females. Nihon Nohyaku Co., Ltd. has noted: (a) that beer and ale drinkers at the upper 99th percentile will be less likely to consume imported beer and ale than will beer and ale drinkers at the median consumption levels; and, (b) that ales are not hopped. At median consumption levels (approximately 5 fold lower than the upper 99th percentile consumption) the percent RfD utilization is 0.90% for male beer and ale drinkers, and 0.54% for female beer and ale drinkers

iii. *Drinking water*. This is an import tolerance petition and there are no uses of fenpyroximate in the United States. Accordingly, there is no potential for drinking water exposure associated with the approval of this petition.

2. *Non-dietary exposure*. Fenpyroximate is not registered in the United States and is only an agricultural use miticide. Therefore, there are non-dietary exposure which could result from approval of this petition. Were fenpyroximate to be registered in the United States there would still be no potential for non-dietary, non-occupational exposures.

*D. Cumulative Effects*

There is no reliable information to indicate that fenpyroximate has a common mechanism of toxicity with any other chemical compound.

*E. Endocrine Effects*

There is no reliable information to indicate that fenpyroximate has a potential to produce endocrine effects.

*F. Safety Determination*

1. *U.S. population*. Since the proposed import tolerances for fenpyroximate in or on grapes and hops are, under worst case conditions, anticipated to lead to only negligible adult dietary exposures to fenpyroximate TTR (i.e., not greater than 0.61% of the RfD for adult wine drinkers at the upper 99th percentile of consumption, and not greater than 4.5% of the RfD for adult beer and ale drinkers at the upper 99th percentile of consumption, with ''negligible'' defined at 40 CFR 180.1(l) as ''ordinarily'' not greater than 5% of the RfD) Nihon Nohyaku Co., Ltd. concludes that there is a reasonable certainty that no harm to the general adult population will result from dietary exposure to residues which could occur as a result of approval of this petition.

2. *Infants and children*. The proposed import tolerance does not affect foods or beverages legally consumed by children and infants. Therefore, Nihon Nohyaku Co., Ltd. concludes that there is a reasonable certainty that no harm to infants and children will result from dietary exposure to residues which could occur as a result of approval of this petition.

3. *Sensitive individuals*. The toxicology data base for fenpyroximate demonstrates a consistency in effects, NOAELs, and LOAELs among rats, mice, and dogs. This suggests that inter-species differences in metabolism and sensitivity to fenpyroximate are not large which, in turn, suggests that metabolic and sensitivity differences among human subpopulations exposed to fenpyroximate will be small. Also, worst case exposure to residues is at negligible levels and the margins of exposure for wine drinkers are at least 16,000 for wine drinkers, and at least 2,200 for beer and ale drinkers, which suggests that differences in sensitivity to fenpyroximate among human subpopulations, including persons who were ill, would have to be quite large in order to lead to exposures of concern in sensitive individuals. Therefore, Nihon Nohyaku Co., Ltd. concludes that there is a reasonable certainty that no harm to sensitive persons will result from dietary exposure to residues which could occur as a result of approval of this petition.

*G. International Tolerances*

There are no Codex maximum residue levels (MRLs) established for residues of fenpyroximate resulting from the application of fenpyroximate to grapes or hops. Proposals for a German MRL of 10 ppm on green hops and, 0.5 ppm on grapes and for Italian and Spanish MRLs of 0.3 ppm on grapes are being reviewed by the respective countries. Since these are lower than the proposed import tolerances, there is very little likelihood that residues in violation of the import tolerances could occur.

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**2. Rohm and Haas Company**

*PP 7F4824*

EPA has received a revised pesticide petition (7F4824) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part

180 by establishing a tolerance for residues of tebufenozide benzoic acid, 3,5-dimethyl-,1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide in or on the raw agricultural commodity crop subgroup leafy greens, crop subgroup leaf petioles, crop subgroup head and stem Brassica and crop subgroup leafy Brassica greens at 10.0, 2.0, 5.0, and 10.0 parts per million (ppm) respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice, and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage.

2. *Analytical method*. A high performance liquid chromatographic (HPLC) analytical method using ultraviolet (UV) or mass spectrometry (MS) detection has been validated for leafy and cole crop vegetables. For all matrices, the methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method is 0.01 part per million (ppm) for all representative crops of these crop subgroups except for celery which is 0.05 ppm.

3. *Magnitude of residues*. Magnitude of the residue studies were conducted in celery, and mustard greens using the maximum proposed label rate. Samples were collected 7 days after the last application and were analyzed for residues of tebufenozide. The residue data support a tolerance of 5.0 ppm for the crop subgroup leaf petioles (4A), and 10.0 ppm for the crop subgroup Leafy Brassica Green Vegetables (5B).

*B. Toxicological Profile*

1. *Acute toxicity*. Acute toxicity studies with technical grade: Oral $LD_{50}$ in the rat is > 5 grams for males and females - Toxicity Category IV; dermal $LD_{50}$ in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation $LD_{50}$ rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. *Genotoxicty*. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

3. *Reproductive and developmental toxicity*. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group, tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day, and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity no-observed adverse effect level (NOAEL) was 1,000 mg/kg/day.

In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group, tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a 1993 2-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males, and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively), and the lowest-observed adverse effect level (LOAEL) was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively), and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males, and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males, and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males, and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

4. *Subchronic toxicity*. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group, tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

5. *Chronic toxicity*. A 1 year dog feeding study with a LOAEL of 250 ppm, 9 mg/kg/day for male and female dogs based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The

liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

An 18 month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

A 2 year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The adsorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (rat, goat, hen) metabolism studies.

7. *Metabolite toxicology*. Common metabolic pathways for tebufenozide have been identified in both plants (grape, apple, rice, and sugar beet), and animals (rat, goat, hen). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of the aromatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residue are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption*. The toxicology profile of tebufenozide shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on structure-activity information, tebufenozide is unlikely to exhibit estrogenic activity. Tebufenozide was not active in a direct *in vitro* estrogen binding assay. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Ecdysone has no known effects in vertebrates. Overall, the weight of evidence provides no indication that tebufenozide has endocrine activity in vertebrates.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, apples at 1.0 ppm, pecans at 0.01 ppm and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. Other tolerance petitions are pending at EPA with proposed tolerances ranging from 0.3 ppm in or on sugarcane to 10 ppm in cole crop vegetables. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide as follows:

ii. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

iii. *Chronic exposure and risk*. The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this exposure assessment, Rohm and Haas has made very conservative assumptions 100% of pecans, walnuts, wine and sherry, pome fruit, and all other commodities having tebufenozide tolerances or pending tolerances will contain tebufenozide residues, and those residues would be at the level of the tolerance which result in an over estimate of human dietary exposure. Thus, in making a safety determination for this tolerance, Rohm and Haas is taking into account this conservative exposure assessment. Using the Dietary Exposure Evaluation Model (Version 5.03b, licensed by Novigen Sciences Inc.) which uses USDA food consumption data from the 1989-1992 survey and the appropriate concentration or reduction factors, the existing tebufenozide tolerances published, pending, and including the necessary section 18 tolerance(s) resulted in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

U.S. Population (35.8% of RfD);

Northeast Region (37.5% of RfD);

Western Region (39.8%);

Pacific Region (40.9%)All Infants (<1 year) (36.3%);

Nursing Infants (<1 year old) (16.8% of RfD);

Non-Nursing Infants (<1 year old) (44.5% of RfD);

Children (1-6 years old) (61.9% of RfD);

Children (7-12 years old) (45.6% of RfD);

Females (13 + years old, nursing) (30.6% of RfD);

Non-Hispanic Whites (36.0%);

Non-Hispanic Other than Black or White (43.1% of RfD).

The subgroups listed above are subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

iv. *Drinking water— Acute exposure and risk*. Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

v. *Chronic exposure and risk*. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore, these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

2. *Non-dietary exposure*. Tebufenozide is not currently registered for use on any residential non-food sites. Therefore, there is no chronic, short- or intermediate-term exposure scenario.

*D. Cumulative Effects*

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available

information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 35.8% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

*Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

Since, tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' this risk does not exist.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, data from developmental toxicity studies in the rat and rabbit, and two 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOAEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day, which is the limit dose for testing in developmental studies.

In the 2-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOAEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOAEL (0.85 mg/kg/day). The reproductive (pup) LOAEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams. These effects were not replicated at the same dose in a second 2-generation rat reproduction study. In this second study, reproductive effects were not observed at 2,000 ppm (the NOAEL equal to 149-195 mg/kg/day), and the NOAEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

Because these reproductive effects occurred in the presence of parental (systemic) toxicity and were not replicated at the same doses in a second study, these data do not indicate an increased pre-natal or post-natal sensitivity to children and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure. FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data discussed above, an additional uncertainty factor is not warranted and the RfD at 0.018 mg/kg/day is appropriate for assessing aggregate risk to infants and children. Rohm and Haas concludes that there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of tebufenozide.

*F. International Tolerances*

There are no approved CODEX maximum residue levels (MRLs) established for residues of tebufenozide. (Melody Banks)

**3. Rohm and Haas Company**

*PP 7F4869*

EPA has received a revised pesticide petition (7F4869) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of tebufenozide benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide] in or on the raw agricultural commodity crop grouping, fruiting vegetables except cucurbits at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice, and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage.

2. *Analytical method*. A validated high performance liquid chromatographic (HPLC) analytical method using ultraviolet (UV) detection is employed for measuring residues of tebufenozide in peppers, tomatoes, and tomato process fractions. The method involves extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.02 ppm.

3. *Magnitude of residues*. Field residue trials in tomatoes, and peppers were conducted in geographically representative regions of the U.S. The highest field residue value for a single replicate sample was 0.76 parts per million (ppm). Results of analysis of tomato paste and puree samples from a processing study with treated tomatoes showed no concentration of residues.

*B. Toxicological Profile*

1. *Acute toxicity*. Acute toxicity studies with technical grade: Oral $LD_{50}$ in the rat is > 5 grams for males and females - Toxicity Category IV; dermal $LD_{50}$ in the rat is = 5,000 milligram/kilogram (mg/kg) for males, and females - Toxicity Category III; inhalation $LD_{50}$ in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. tebufenozide is not a sensitizer.

2. *Genotoxicty*. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

3. *Reproductive and developmental toxicity*. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity no-observed adverse effect level (NOAEL was 1,000 mg/kg/day.

In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

In a 1993 2-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males, and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the lowest-observed adverse level (LOAEL) was 150 ppm (11.5/12.8 mg/kg/day for males, and females respectively), based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males, and females respectively), and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males, and females respectively), based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males, and females respectively), with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males, and females respectively).

In a 1995 2-generation reproduction study in rats, tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males, and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males, and females respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males, and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males, and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

4. *Subchronic toxicity*. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

5. *Chronic toxicity*. A 1 year dog feeding study with a LOAEL of 250 ppm, 9 mg/kg/day for male, and female dogs based on decreases in RBC, HCT, and HGB increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the

marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

An 18 month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

A 2 year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males, and females respectively).

6. *Animal metabolism*. The adsorption, distribution, excretion and metabolism of tebufenozide in rats was investigated. Tebufenozide is partially absorbed, is rapidly excreted and does not accumulate in tissues. Although tebufenozide is mainly excreted unchanged, a number of polar metabolites were identified. These metabolites are products of oxidation of the benzylic ethyl or methyl side chains of the molecule. These metabolites were detected in plant and other animal (rat, goat, and hen) metabolism studies.

7. *Metabolite toxicology*. Common metabolic pathways for tebufenozide have been identified in both plants (grape, apple, rice, and sugar beet), and animals (rat, goat, and hen). The metabolic pathway common to both plants and animals involves oxidation of the alkyl substituents (ethyl and methyl groups) of the aromatic rings primarily at the benzylic positions. Extensive degradation and elimination of polar metabolites occurs in animals such that residue are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption*. The toxicology profile of tebufenozide shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based on structure-activity information, tebufenozide is unlikely to exhibit estrogenic activity. Tebufenozide was not active in a direct *in vitro* estrogen binding assay. No indicators of estrogenic or other endocrine effects were observed in mammalian chronic studies or in mammalian and avian reproduction studies. Ecdysone has no known effects in vertebrates. Overall, the weight of evidence provides noindication that tebufenozide has endocrine activity in vertebrates.

*C. Aggregate Exposure*

1. *Dietary exposure*. The dietary exposure is discussed below.

i. *Food*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, apples at 1.0 ppm, pecans at 0.01 ppm, and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. Other tolerance petitions are pending at EPA with proposed tolerances ranging from 0.3 ppm in or on sugarcane to 10 ppm in cole crop vegetables. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks fromtebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide as follows:

ii. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro- or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day limit-dose (LTD) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

iii. *Chronic exposure and risk*. The refrence dose (RfD) used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this exposure assessment, Rohm and Haas has made very conservative assumptions that 100% of pecans, walnuts, wine and sherry, imported apples and all other commodities having tebufenozide tolerances or pending tolerances will contain tebufenozide residues, and those residues would be at the level of the tolerance which result in an over estimate of human dietary exposure. The existing tebufenozide tolerances published, pending, and including the necessary section 18 tolerance(s) resulted in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

U.S. population (34.5% of RfD);

All Infants (> 1 year) (61.4%);

Nursing Infants (> 1 year old) (39.9% of RfD);

Non-Nursing Infants (> 1 year old) (70.4% of RfD);

Children (1-6 years old) (79.8% of RfD);

Children (7-12 years old) (48.5% of RfD);

Females (13 + years old, nursing) (39.5% of RfD);

Non-Hispanic Whites (34.8%);

Non-Hispanic Other than Black or White (40.2% of RfD);

Northeast Region (37.4% of RfD);

Western Region (36.8%);

Pacific Region (36.8%).

The subgroups listed above are subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

iv. *Drinking water—Acute exposure and risk*. Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

v. *Chronic exposure and risk*. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated previously by EPA using GENEEC (surface water), and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

2. *Non-dietary exposure*. Tebufenozide is not currently registered for use on any residential non-food sites. Therefore, there is no chronic, short- or intermediate-term exposure scenario.

*D. Cumulative Effects*

Cumulative exposure to substances with common mechanism of toxicity. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry,

and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 34.5% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's DWLOC. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, data from developmental toxicity studies in the rat and rabbit and two 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. Developmental toxicity was not observed in developmental studies using rats and rabbits. The NOAEL for developmental effects in both rats and rabbits was 1,000 mg/kg/day, which is the LTD for testing in developmental studies.

In the 2-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOAEL of 12.1 mg/kg/day was 14-fold higher than the parental (systemic) toxicity NOAEL (0.85 mg/kg/day). The reproductive (pup) LOAEL of 171.1 mg/kg/day was based on a slight increase in both generations in the number of pregnant females that either did not deliver or had difficulty and had to be sacrificed. In addition, the length of gestation increased and implantation sites decreased significantly in F1 dams. These effects were not replicated at the same dose in a second 2-generation rat reproduction study. In this second study, reproductive effects were not observed at 2,000 ppm (the NOAEL equal to 149-195 mg/kg/day), and the NOAEL for systemic toxicity was determined to be 25 ppm (1.9-2.3 mg/kg/day).

Because these reproductive effects occurred in the presence of parental (systemic) toxicity and were not replicated at the same doses in a second study, these data do not indicate an increased pre-natal or post-natal sensitivity to children, and infants (that infants and children might be more sensitive than adults) to tebufenozide exposure. FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. Based on current toxicological data discussed above, an additional uncertainty factor is not warranted and the RfD at 0.018 mg/kg/day is appropriate for assessing aggregate risk to infants, and children. Rohm and Haas concludes that there is a reasonable certainty that no harm will occur to infants, and children from aggregate exposure to residues of tebufenozide.

*F. International Tolerances*

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in fruiting vegetables so no harmonization issues are required for this action.

[FR Doc. 99–4023 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–861; FRL–6061–4]**

## Novartis Crop Protection; Pesticide Tolerance Petition Filing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by the docket control number PF–861, must be received on or before March 22, 1999.

**ADDRESSES:** By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Giles-Parker, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–861] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–861) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 9, 1999.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Novartis Crop Protection**

*8F4974*

EPA has received a pesticide petition (8F4974) from Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of 1,2,3-Benzothiadiazole-7-carbothioic acid S-methyl ester in or on the raw agricultural commodities leafy vegetables crop group (excluding spinach), spinach, and fruiting vegetables at 0.25, 1.0, and 1.0 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. Novartis believes the metabolism of acibenzolar-S-methyl has been well characterized. Only 4.6% and 14.9% of the total radioactive residue (TRR) was non-extractable in lettuce at the recommended application rate and three times the recommended application rate, respectively. Non-extractables were also low in a tomato metabolism study; 3.4% and 7.4% in tomatoes and foliage, respectively. The metabolism in these crops proceeded via hydrolysis of benzo [1,2,3] thiadiazole-7-carbothioic acid S-methyl ester to benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA), followed by conjugation as ester, glycoside and/or other plant constituents. The metabolism profile supports the use of an analytical enforcement method that accounts for acibenzolar-S-methyl and metabolites containing the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety.

2. *Analytical method*. Novartis Analytical Method AG-671A is a practical and valid method for the determination and confirmation of CGA-245704 in raw agricultural commodities (RAC) and processing substrates from the tobacco, leafy and fruiting vegetable crop groups at a limit of quantitation (LOQ) of 0.02 ppm. The method involves extraction, solid phase cleanup of samples with analysis by high performance liquid chromotography (HPLC) with ultraviolet (UV) detection or confirmatory LC/MS. The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (radiovalidation and field trial sample sets), and by the extractability and accountability obtained by the analysis

of weathered radioactive substrates using Analytical Method AG-671A.

3. *Magnitude of residues*. This petition is supported by forty-four field trials conducted on representative members of the Fruiting Vegetable and the Leafy Vegetable Crop Groupings. All samples were analyzed for by the total residue method (AG-671A) to determine the combined residues of acibenzolar-S-methyl and metabolites which contain the benzo [1,2,3] thiadiazole-7-carboxylic acid (BTCA) moiety. In fruiting vegetables, the residues found for tomatoes, bell peppers, and non-bell peppers ranged from 0.06 ppm to 0.61 ppm, from 0.16 ppm to 0.74 ppm, and from 0.26 ppm 0.68 ppm, respectively. Residues did not concentrate in tomato puree (0.55 ppm). Residues did not concentrate significantly in tomato paste (1.33 ppm); dilution-corrected residue does not exceed the assumed tolerance for the RAC. A tolerance of 1.0 ppm for the fruiting vegetable crop group has been requested. In leafy vegetables, the maximum residues found on representative commodities were 0.09 ppm, 0.11 ppm, 0.20 ppm, and 0.69 ppm for celery, head lettuce, leaf lettuce, and spinach, respectively. A tolerance of 0.25 ppm has been proposed for the Leafy Vegetable Crop Grouping (excluding spinach). A tolerance of 1.0 ppm has been proposed for spinach.

*B. Toxicological Profile*

1. *Acute toxicity*. The risk from acute dietary exposure to acibenzolar-S-methyl is considered to be very low. CGA-245704 and the formulated 50 WG product have low orders of acute toxicity by the oral, dermal and inhalation exposure routes. Results from acute studies all fall within toxicity rating categories of III or IV. CGA-245704 technical has a low order of acute toxicity, is only slightly irritating to skin and eyes, but may cause sensitization by skin contact. An $LD_{50}$ of greater than 5,000 milligram/kilogram (mg/kg) was observed for the acute oral toxicity study in rats. The lowest no-observed-adverse-effect level (NOAEL) in a short term exposure scenario, identified as 50 mg/kg in the rabbit and rat teratology studies, is 10-fold higher than the chronic NOAEL. Based on worst case assumptions, the chronic exposure assessments (see below) did not result in any margin of exposure (MOE) less than 3,330 for even the most impacted population subgroup, Novartis believes the MOE is greater than 100 for any population subgroups; EPA considers MOEs of 100 or more as satisfactory. The following are results from the acute toxicity tests conducted on the technical material:

i. Rat oral $LD_{50}$: > 5,000 mg/kg/bwt. (M/F) Tox. Category IV

ii. Rat dermal $LD_{50}$: > 2,000 mg/kg/bwt. (M/F) Tox. Category III

iii. Acute Inhalation $LC_{50}$: > 5,000 mg/L (M/F) Tox. Category IV

iv. Rabbit Eye Irritation: Minimally irritating -- Tox. Category III

v. Rabbit dermal irritation: Slightly irritating -- Tox. Category IV

vi. Dermal Sensitization: Sensitizer

2. *Genotoxicty*. CGA-245704 technical was not mutagenic or clastogenic and did not provoke unscheduled DNA synthesis when tested thoroughly in a battery of standard *in vivo*, and *in vitro* independent assays, using both eukaryotes and prokaryotes, and with or without metabolic activation. These tests are summarized below:

i. Microbial/Microsome Mutagenicity Assay: Non-mutagenic

ii. Mammalian Cell CHO Mutagenicity Assay: Non-mutagenic; Non-clastogenic

iii. CH Bone marrow: Non-clastogenic; negative for chromosome aberrations

iv. Mouse Micronucleus Test: Non-clastogenic ; negative for chromosome aberrations

v. DNA Damage and Repair Rat hepatocyte: Negative]

3. *Reproductive and developmental toxicity*. Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. In the rat multigeneration study, CGA-245704 (acibenzolar-S-methyl) technical had no effect on rat reproductive parameters including gonadal function, estrus cycles, mating behavior, conception, parturition, lactation, weaning, and sex organ histopathology. At 4,000 ppm, parental body weights (bwt) were reduced. This demonstrated by the results of the following studies:

i. Rat oral teratology - Maternal NOAEL of 200 mg/kg based on embryotoxicity and teratogenic effects; Fetal NOAEL of 50 mg/kg.

ii. Rabbit oral teratology study - Maternal NOAEL of 50 mg/kg based on maternal toxicity and slightly delayed ossification; Fetal NOAEL of 300 mg/kg based on changes in bwt.

iii. Rat 2-generation reproduction study - NOAEL of 25 mg/kg based on weight development in adults at 4,000 ppm and pups during lactation at 2,000 ppm and above. No adverse effects on reproduction or fertility.

4. *Subchronic toxicity*. No signs of neurotoxicity were noted with CGA-245704 in both acute and subchronic studies even at the highest dose levels of 800 mg/kg and 8,000 ppm, respectively. The evaluated parameters included functional observation battery, motor activity measurement and neurohistopathologic assessment. These tests are summarized below:

i. Rat 28-day dermal study - NOAEL of 1,000 mg/kg/day

ii. Dog 90-day feeding study - NOAEL of 10 mg based on reduced bwt gain at 50 mg/kg/day

iii. Mouse 90-day feeding - NOAEL of < 30 mg/kg based on reduced bwt development at 1,000 ppm and above

iv. Rat 90-day feeding study - NOAEL of 25 mg/kg based on inappetence and reduced bwt development at higher dose levels (4,000, and 8,000 ppm).

5. *Chronic toxicity*. Based on the available chronic toxicity data, Novartis Crop Protection, Inc. believes the Reference dose (RfD) for acibenzolar-S-methyl is 0.05 mg/kg/day. Acibenzolar-S-methyl is not oncogenic in rats or mice and is not likely to be carcinogenic in humans. No carcinogenic activity was detected in mice and rats at the Maximum Tolerated Dose (MTD). There was no evidence of carcinogenicity in an 18-month feeding study in mice and a 24 month feeding study in rats. Dosage levels in both the mouse and the rat studies were adequate for identifying a cancer risk. Novartis believes acibenzolar-S-methyl should be classified as a ''Not Likely'' carcinogen based on the lack of carcinogenicity in rats and mice.

6. *Animal metabolism*. Metabolism proceeded primarily via hydrolysis to form the corresponding carboxylic acid (BTCA) which was subsequently conjugated with several amino acids including glycine, lysine and ornithine. Elimination was rapid in all cases. Oxidation of the aromatic ring of the acid was a very minor pathway observed in goats. The metabolic fate of CGA-245704 in plants paralleled that observed in animals. The major metabolite in all test systems was the same hydrolysis product BTCA. Thus, the metabolism profile supports the use of an analytical enforcement method that accounts principally for parent and BTCA.

7. *Metabolite toxicology*. In short-term toxicity studies in rats, CGA-210007 was found to be of, at most, equal or less toxicity than the parent compound. As with parent CGA-245704, the subchronic NOAEL for CGA-210007 was 100 mg/kg bwt.

8. *Endocrine disruption*. Acibenzolar-S-methyl does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that acibenzolar-S-methyl might have any effects on endocrine function related to

development and reproduction. Acibenzolar-S-methyl is not a teratogenic hazard except at, or close to, the maximum tolerated dose. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC) from the requested tolerances for the raw agricultural commodities: Leafy Vegetables (excluding spinach) at 0.25 ppm; Spinach at 1.0 ppm; and Fruiting Vegetables at 1.0 ppm. The TMRC is a ''worst case'' estimate of dietary exposure since it assumes 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels. In conducting this exposure assessment, Novartis has made very conservative assumptions -- 100% of all leafy vegetable and spinach, and fruiting vegetable commodities will contain acibenzolar-S-methyl residues at tolerance levels -- which result in an overestimate of human exposure. The RfD of 0.05 mg/kg/day is based on a 1-year feeding study in dogs with a NOAEL of 5 mg/kg/day and an uncertainty factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as weight changes were the most sensitive indicators of toxicity in that study.

ii. *Drinking water*. Acibenzolar-S-methyl is rapidly degraded in the environment via photolysis and microbial degradation; aqueous and soil photolysis irradiated half-lives for acibenzolar-S-methyl are 0.6 hours and 24 hours, respectively. The aerobic metabolism half-life is 5.3 hours. Anaerobic aquatic metabolism half-lives are 4 days and 96 days for primary and secondary half-life, respectively. The leaching potential for acibenzolar-S-methyl is low (Koc = 492-3288). Dietary exposure to acibenzolar-S-methyl from water intake for the most sensitive subpopulation of children (1-6 years old), was calculated to be < 0.01% of the RfD, based on the GENEEC model. Based on these data, Novartis does not anticipate exposure to residue of acibenzolar-S-methyl in drinking water.

2. *Non-dietary exposure*. Novartis believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for acibenzolar-S-methyl are for agricultural crops and the product is not used residentially in or around the home.

*D. Cumulative Effects*

Novartis believes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by acibenzolar-S-methyl would be cumulative with those of any other chemicals. Acibenzolar-S-methyl is a plant activator and no other compounds in this class are registered in the United States. Consequently, Novartis is considering only the potential exposure to acibenzolar-S-methyl in its aggregate risk assessment.

*E. Safety Determination*

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data base for acibenzolar-S-methyl, Novartis has calculated aggregate exposure levels for this chemical. Based on chronic toxicity endpoints, only 1.8% of the RfD will be utilized for the U.S. general population. Dietary exposure to acibenzolar-S-methyl from water intake for the most sensitive subpopulation of children (1-6 years old), was calculated to be < 0.01% of the RfD, based on the GENEEC model. EPA usually has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to acibenzolar-S-methyl residues.

2. *Infants and children*. Embryotoxicity and fetotoxicity were apparent at maternally toxic doses of CGA-245704 technical in rats and rabbits. The lowest NOAEL for this effect was established in the 2-generation reproduction study at 25 mg/kg (200 ppm).

Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated the utilization of RfD by aggregate exposure to residues of acibenzolar-S-methyl to be 0.4% for nursing infants less than 1 year old, 1.5% for non-nursing infants less than 1 year old, 3.2% for children 1-6 years old, and 2.5% for children 7-12 years old. Dietary exposure to acibenzolar-S-methyl from water intake for the most sensitive subpopulation of children (1-6 years old), was calculated to be < 0.01% of the RfD, based on the GENEEC model. Novartis believes that under the worst case assumptions which overestimate exposure to infants and children, there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to acibenzolar-S-methyl residues.

Additionally, CGA-245704 is not a reproductive toxin. Some signs of teratogenicity were found at, or close to, maternally toxic doses. No neurotoxic effects or oncogenic activity has been observed with CGA-245704. From these available toxicology data, no special susceptibility of infants or children is anticipated.

*F. International Tolerances*

Codex maximum residue levels (MRL's) have not been established for residues of CGA-245704 in or on raw agricultural commodities from the fruiting vegetable and leafy vegetable crop groups. Maximum residue levels of 0.1 ppm have been established for CGA-245704 on wheat in Switzerland and Hungary. Proposed CODEX MRLs of 1.0 ppm on tomatoes and 0.1 ppm on bananas, cereals, wheat, spring barley, and rice have been proposed.

[FR Doc. 99–4024 Filed 2–17–99; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** FEDERAL ELECTION COMMISSION BILLING CODE: 6715–01–M.

**DATE & TIME:** Tuesday, February 23, 1999 at 10:00 a.m.

**PLACE:** 999 E Street, N.W. Washington, D.C.

**STATUS:** The Meeting Will be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personal rules and procedures or matters affecting a particular employee.

**DATE & TIME:** Wednesday, February 24, 1999 at 10:00 a.m.

**PLACE:** 999 E Street, N.W. Washington, D.C. (Ninth Floor)

**STATUS:** The Hearing Will be Open to the Public.

**MATTER BEFORE THE COMMISSION:** 1996 Committee on Arrangements for the Republican National Convention.

**DATE & TIME:** Thursday, February 25, 1999 at 10:00 a.m.

**PLACE:** 999 E Street, N.W. Washington, D.C. (Ninth Floor)

**STATUS:** The Hearing Will be Open to the Public.

**ITEMS TO BE DISCUSSES:**

Correction and Approval of Minutes.

Advisory Opinion 1999–01: Mark Greene.

Revising

Revising the National Voting System Standards.

Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.

Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.

Report of the Audit Division on the Dole for President Committee, Inc. (Primary).

Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).

Legislative Recommendations, 1999.

Notice of Proposed Rulemaking on the Electronic Freedom of Information Act Amendments (''EFOIA'').

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Majorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 99–4203 Filed 2–16–99; 3:10 pm]

**BILLING CODE 6715–01–M**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 12, 1999.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Lakeland Bancorp*, Oak Ridge, New Jersey; to merge with High Point Financial Corp., Branchville, New Jersey, and thereby indirectly acquire The National Bank of Sussex County, Branchville, New Jersey.

Board of Governors of the Federal Reserve System, February 11, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–3885 Filed 2–17–99; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, February 22, 1999.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 12, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–4048 Filed 2–12–99; 5:08 pm]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Human Immunodeficiency Virus (HIV) Prevention Activities for African American Populations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice and request for comments.

**SUMMARY:** The Fiscal Year 1999 appropriation for CDC includes an increase in funds to support Human Immunodeficiency Virus (HIV) prevention activities predominantly for African American populations. CDC is proposing to award approximately $15.5 million to fund three cooperative programs to address the needs of these populations: community-based organizations (CBO) program, minority organization technical assistance (MOTA) program, and community coalitions demonstration program to develop linkages among HIV, STD (sexually transmitted diseases), TB (tuberculosis), and substance abuse services. On the basis of demonstrated need and available funds, other disproportionately affected racial and ethnic minority populations may be considered for funding.

Under separate announcements, an additional $500,000 will be awarded to CBOs in the Virgin Islands to provide HIV prevention services, and $300,000 to Divinity Schools affiliated with Historically Black Colleges and Universities to develop HIV prevention training and curricula.

The purpose of this notice is to request comments on these proposed programs. After consideration of comments submitted, CDC will publish program announcements to solicit applications. A more complete description of the goals of these programs, the target applicants, availability of funds, program requirements, and evaluation criteria follows.

**DATES:** The public is invited to submit comments by March 4, 1999.

**ADDRESS:** Submit comments to: Technical Information and Communication Branch National Center for HIV, STD and TB Prevention Centers for Disease Control and Prevention (CDC) 1600 Clifton Road, NE., Mailstop E–49 Atlanta, GA 30333.

**FOR FURTHER INFORMATION CONTACT:** Technical Information and Communications Branch National Center for HIV, STD, and TB Prevention Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mail Stop E–49, Atlanta, GA 30333, Fax (404) 639–2007, E-mail address: *hivmail@cdc.gov*, Telephone (404) 639–2072.

**SUPPLEMENTARY INFORMATION:**

**CBO Program**

The purpose of this program is to support the development and implementation of effective community-based HIV prevention programs, including programs provided by faith-based CBOs, that serve African American communities.

*1. Goals (CBO)*

A. Provide financial and technical assistance to indigenous CBOs to provide HIV prevention services to primarily African American populations for which gaps in services are demonstrated. For this program, indigenous organizations are defined as organizations that evolved from and are located within the communities they serve.

B. Support HIV prevention programs that reflect national program goals and are consistent with the HIV prevention priorities outlined in the jurisdiction's comprehensive HIV prevention plan.

C. Promote the collaboration and coordination of HIV prevention efforts among CBOs and other local, State, and federally funded programs.

*2. Eligible Applicants (CBO)*

Eligible applicants are minority CBOs, including faith-based organizations, that meet the following criteria:

A. An IRS-determined 501(c) tax-exempt status

B. A governing board composed of more than 50 percent of the racial or ethnic population to be served. This body must also include, or demonstrate the ability to obtain meaningful input and representation from, members of the target populations, for example, men who have sex with men, youth, women at risk, transgender populations, substance abusers.

C. Located and providing services in any of the following:

(1) The 20 metropolitan statistical areas (MSAs) with more than 1000 AIDS cases in African American populations in 1997. These MSAs are: Atlanta, GA; Baltimore, MD; Boston, MA; Chicago, IL; Dallas, TX; Detroit, MI; Ft. Lauderdale, FL; Houston, TX; Jacksonville, FL; Los Angeles-Long Beach, CA; Miami, FL; Newark, NJ; New Haven, CT; New Orleans, LA; New York, NY; Oakland, CA; Philadelphia, PA; San Francisco, CA; West Palm Beach, FL; and Washington, D.C.; or

(2) The counties and independent city with the most syphilis cases in 1997 but not included in the list of MSAs above. The counties are: Cumberland, NC; Cuyahoga, OH; Davidson, TN; Forsyth, NC; Franklin, OH; Fresno, CA; Guilford, NC; Hinds, MS; Jefferson, AL; Jefferson, KY; Maricopa, AZ; Marion, IN; Milwaukee, WI; Oklahoma, OK; Prince Georges, MD; Shelby, TN; and Tuscaloosa, AL. The independent city is St. Louis, MO.

D. Minority CBOs currently funded under program announcement 704 that are located and provide services in the areas specified in B and C are eligible to apply for funding under this program announcement. However, awards to currently funded minority CBOs will not exceed $100,000.

E. Faith-Based Organizations: For the purpose of this program announcement, a faith-based community organization is a non-profit organization which

(1) Has a religious, faith, spiritual focus or constituency, and

(2) Has access to local religious, faith, and spiritual leaders.

Eligible organizations include:

(1) Individual church, mosque, or temple or network of same, or

(2) A community-based organization whose primary constituency is faith, spiritual, or religious communities, organizations, or leaders thereof.

*3. Availability of Funds (CBO)*

Approximately $9,600,000 is available for funding approximately 45 minority CBOs, including faith-based community organizations. Approximately $600,000 of this total will be awarded to faith-based organizations;

A. Approximately $7,000,000 will be awarded to CBOs in the 20 MSAs with more than 1000 AIDS cases in African American populations in 1997. Awards for new organizations will range from $150,000 to $300,000 and the average award will be approximately $200,000. Applications for more than $300,000 will be deemed ineligible.

B. Approximately $1,600,000 will be awarded to CBOs located and providing services in the counties and independent city with the most syphilis cases in 1997 not included in the top 20 MSAs. These awards will average $200,000 and will range from $150,000 to $250,000. Applications for more than $250,000 will be deemed ineligible.

C. Approximately $1,000,000 may be awarded to minority CBOs currently funded under Program Announcement 704 that are located and provide services in the MSAs, counties, and independent city listed above. Supplemental awards for currently funded minority CBOs will not exceed $100,000. Applications for more than $100,000 will be deemed ineligible. Funds awarded to currently funded CBOs must be used to enhance or expand existing activities.

D. Funding Priorities: In making funding decisions, efforts will be made to ensure a national geographic distribution of funded CBOs, based on AIDS morbidity, and to ensure a national distribution of funded CBOs in terms of targeted risk behaviors, based on AIDS morbidity.

**4. Program Requirements (CBO)**

A. Conduct HIV counseling, testing, and referral services and health education and risk reduction (HE/RR) interventions for persons at high risk of becoming infected or transmitting HIV to others. Counseling, testing, and referral services as well as the following four HERR interventions will be funded: Individual Level, Group Level, Community Level, and Street and Community Outreach. Each recipient must conduct at least one of these priority interventions. Applicants are encouraged not to apply for more interventions than they can conduct effectively.

B. Assist high-risk clients in gaining access to HIV antibody counseling, testing, and referral for other needed services.

C. Assist HIV positive persons in gaining access to appropriate HIV treatment and other medical care, substance abuse prevention services, STD treatment, partner counseling and referral services, and health education and risk reduction services.

D. Coordinate and collaborate with health departments, community planning groups, and other organizations and agencies involved in HIV prevention activities, especially those serving the same target population.

E. Evaluate all major program activities and services.

*5. Evaluation Criteria (CBO)*

A. Assessment of Need and Justification for the Proposed Activities (15 points)

B. Long-term Goals (5 points)

C. Organizational History and Capacity. (20 points)

D. Program Plan (30 total points)

E. Evaluation Plan (20 points)

F. Communications/Dissemination Plan (5 points)

G. Plan for Acquiring Additional or Matching Resources (5 points)

I. Budget/Staffing Breakdown and Justification (not scored)

J. Training and Technical Assistance Plan (not scored)

K. Before final award decisions are made, CDC may make site visits to CBOs whose applications are highly ranked or may review the following items with the local or State health department and applicant's board of directors:

1. The organizational and financial capability of the applicant to implement the proposed program;

2. The application and program plans for priority interventions, compliance with the jurisdiction's HIV prevention priorities as outlined in the comprehensive plan or, if the proposed program varies from the jurisdiction's comprehensive plan, evaluate the rationale for the variance; and

3. The special programmatic conditions and technical assistance requirements of the applicant.

A fiscal Recipient Capability Assessment may be required of applicants prior to the award of funds.

**MOTA Program**

*1. Goal (MOTA)*

Improve the capacity of CBOs, including faith-based organizations, to deliver effective HIV prevention services to African Americans and increase the effectiveness and responsiveness of the HIV prevention community planning process and health department HIV prevention programs to meet the needs of African American communities heavily affected by HIV and other STDs.

*2. Eligible Applicants (MOTA)*

A. National, regional, or local minority organizations.

B. National, regional, or local minority religious, spiritual, or faith-based organization, which may include churches, mosques, or temples.

*3. Availability of Funds (MOTA)*

A. Approximately $2.4 million will be available. Approximately $600,000 of the $2.4 million will be available for faith-based projects.

B. Funding priorities will ensure

(1) A national geographic distribution of available technical assistance and training services, consistent with AIDS morbidity;

(2) Availability of technical assistance and training services to organizations predominantly serving African Americans and highly affected subgroups consistent with AIDS morbidity of these subgroups; and

(3) An appropriate balance in the types of technical assistance and training services available.

*4. Program Requirements (MOTA)*

Delivery of technical assistance must be specified according to (1) racial or ethnic population and (2) targeted high-risk group (e.g., men who have sex with men [MSMs], injecting drug users [IDUs] and non-injecting substance users, women at risk, transgender, high-risk heterosexuals, youth).

Organizations may apply to provide technical assistance in one or more of the following areas. However, applicants need not apply to provide service in all areas and should not attempt to provide technical assistance in areas in which they do not currently have expertise and capacity.

A. Technical Assistance for HIV Prevention Service Delivery;

B. Technical Assistance for Management and Administrative Capacity;

C. Technical Assistance to ensure the needs of racial and ethnic minority populations are addressed in Community Planning; or

D. Technical Assistance to develop community capacity for leadership in HIV prevention programs and policy making.

*5. Evaluation Criteria (MOTA)*

Criteria A through G will be scored, but weights have not been assigned. Public comment is encouraged.

A. Assessment of Need and Justification for Proposed Activities.

B. Long-term Goals.

C. Organizational History and Capacity.

D. Program Proposal.

(1) Involvement of Target Population.

(2) Appropriateness of Interventions.

(3) Objectives.

(4) Plan of Operations.

(5) Scientific, Theoretical, Conceptual, or Program Experience Foundation.

(6) Coordination and Collaboration.

(7) Time Line.

E. Evaluation Plan.

F. Communication and Dissemination Plan.

G. Plan for Acquiring Additional or Matching Resources.

H. Budget/Staffing Breakdown and Justification (not scored).

I. Training and Technical Assistance Plan (not scored).

**Community Coalition Demonstration Program**

The purpose of this program is to improve the health status of African American community members by increasing access to linked networks of health services including HIV, STD, TB, and substance abuse prevention, treatment, and care.

*1. Goals (Community Coalition)*

A. Plan and develop a linked network of HIV, STD, TB, and substance abuse prevention, treatment, and care services for African American and Latino community members,

B. Strengthen existing linkages among local prevention, treatment, and care providers to better serve African American and Latino communities heavily affected by HIV, STD, TB, and substance abuse.

*2. Eligible Applicants (Community Coalition)*

A. Local non-profit health, social service, or voluntary service organizations, or CBOs with IRS-determined 501(c) tax-exempt status and a governing or advisory body composed of more than 50 percent of the racial or ethnic minority population to be served.

B. Applications under this announcement will be categorized into one of two mutually exclusive groups:

(1) Organizations serving communities located in high HIV prevalence MSAs, or

(2) Organizations serving communities located in lower HIV prevalence geographic areas.

*3. Availability of Funds (Community Coalition)*

A. Phase 1 (Year 1)

Approximately 20 organizations will be funded in 1999 to plan and design a linked network of services in African American or Latino communities highly affected by HIV, STD, TB, and substance abuse. Approximately $2,750,000 will be available to fund approximately 15 projects in the high prevalence MSAs listed under CBOs. It is estimated that the average award will be $180,000, ranging from $75,000 to $300,000. Approximately $750,000 will be available in FY 1999 to fund approximately 5 projects in lower HIV prevalence geographic areas listed under CBOs. It is estimated that the average award will be $150,000, ranging from $50,000 to $200,000.

B. Phase 2 (Year 2–5)

Three to five of the Phase 1 grantees will receive continuation awards for

Phase 2. Selection of Phase 2 grantees will be based on the extent and quality of progress in the planning and designing phase. The number of Phase 2 awards will be based on availability of funds. Phase 2 awards will be made for a 12-month budget period within a project period of up to four years.

Applications for more than $300,000 in high prevalence areas and $200,000 in low prevalence areas will be deemed ineligible.

C. Funding Priorities

In making awards for Phase 1, priority will be given to assuring geographic distribution nationally consistent with HIV/AIDS morbidity.

*4. Program Requirements (Community Coalition)*

A. Phase 1

The recipient will be responsible for coordinating efforts among collaborating organizations and agencies and will:

(1) Identify a full-time position with the responsibility, authority, professional training, and experience needed to lead and coordinate program activities of the coalition;

(2) Convene a work group consisting of representatives from local service providers and affected community members to develop a plan for a linked network of services;

(3) Identify key community leaders and engage them as part of the coalition;

(4) Establish linkages with local HIV prevention community planning groups;

(5) Conduct a community needs assessment, as appropriate;

(6) Develop an inventory of existing community resources, as appropriate;

(7) Use information developed by the community planning groups pertinent to the targeted community;

(8) Establish linkages with existing local and community-based organizations funded by the federal government to prevent and treat HIV/AIDS, other STDs, TB, and substance abuse including local health departments, neighborhood health clinics, WIC programs and family planning clinics;

(9) Participate in at least one CDC sponsored meeting of funded agencies; and

(10) Begin to implement the plan for a linked network of services.

B. Phase 2

The recipient will:

(1) Fully implement the plan;

(2) Serve as liaison among members of the coalition to provide management oversight, facilitate program implementation and operations, and maintain effective working relationships; and

(3) Conduct an evaluation of the system and of client outcomes.

*5. Evaluation Criteria (Community Coalition)*

A. Assessment of Need and Justification for Proposed Activities (Total 20 Points).

B. Long-term Goals (Total 5 points).

C. Existing Collaborative Activities and Organizational History and Capacity (25 points).

D. Program Plan (25 points).

E. Program Management and Staffing Plan (10 points).

F. Communication and Dissemination Plan (5 points).

G. Evidence of Support from the Target Community (10 points).

H. Plan for Acquiring Additional or Matching Resources (not scored).

I. Budget Breakdown and Justification (not scored).

J. Training and Technical Assistance Plan (not scored).

Dated: February 11, 1999.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 99–3939 Filed 2–17–99; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration (SAMHSA)

## Notice of Technical Assistance Workshops

**AGENCY:** Center for Mental Health Services; Center for Substance Abuse Prevention; Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, HHS.

Notice is hereby given of the following workshops for the provision of technical assistance to potential applicants for SAMHSA grants.

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP) and Center for Substance Abuse Treatment (CSAT), are offering a series of three one-day regional Technical Assistance Workshops for prospective applicants. These workshops will be conducted jointly by the three SAMHSA Centers to provide support to prospective applicants in preparing their applications to published grant announcements.

It is anticipated that several SAMHSA grant announcements will be featured at the workshop:

*Center for Mental Health Services*

Comprehensive Community Mental Health Services for Children and Their Families
Community Action Grants for Service Systems Change—Phase I
School Violence

*Center for Substance abuse Prevention*

Community—Initiated Prevention Interventions
Family Strengthening
Substance Abuse Prevention and HIV Disease Prevention

*Center for Substance Abuse Treatment*

Targeted Capacity Expansion
Targeted Capacity Expansion Program for Treating Substance Abuse and HIV/AIDS
Adolescent Treatment Models
Comprehensive Community Treatment Program for the Development of New and Useful Knowledge
Community Action Grants
HIV/AIDS Outreach

These GFAs can be found at the SAMHSA Web Site at www.SAMHSA.gov. following publication in the **Federal Register**. Potential participants are strongly encouraged to check these resources and be familiar with the GFAs in which they are interested prior to attending the workshop.

The Technical Assistance Workshops will be held at the following locations: Workshop I—Washington, DC, Thursday, March 11, Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009, (202) 483–3000; Workshop II—Chicago, IL , Wednesday, March 17, Sheraton Chicago Hotel & Towers, 301 East North Water Street, Chicago, IL 60611, (312) 464–1000; and Workshop III—Los Angeles, CA, Friday, March 19, LA Airport Hilton and Towers, 5711 West Century Blvd, Los Angeles, CA 90045, (310) 410–4000.

Registration and check-in at each site will be at 8:00 a.m.; workshop hours are 8:30 a.m.–5:00 p.m.

Preliminary Agenda Highlights for the TA Workshops include: (1) Review of SAMHSA programs and priorities; (2) Provision of related resource materials; (3) Technical/practical aspects of the grant application process including application requirements, improving applications, instruction in completing required forms, submission, review, award procedures, and program evaluation; (4) Separate breakout sessions for discussion of specific grant

announcements; and (5) Opportunity for questions and answers.

*TA Workshop Arrangements and Contacts*

There is no registration fee for the workshops. Preregistration is strongly encouraged. Registrants will be responsible for costs associated with their own travel, meals, and lodging. Workshop confirmation will be faxed. For logistical assistance please contact Ms. Lisa Wilder by phone at (301) 984–1471, x333 or by fax at (301) 984–4416. For information regarding the content of the TA Workshops, please contact Ms. Sarah Silverman at (301) 443–1249.

SAMHSA suggests that the attendees be those persons having the responsibility for conceptualizing and writing the application.

*Hotel Information*

Participants are responsible for making their own hotel reservations. When calling the hotel, reference the SAMHSA Grantee Workshop. Registrants are urged to make their hotel reservations as soon as possible.

Date February 10, 1999.

**Richard Kopanda,**

*Executive Officer,*

*SAMHSA.*

[FR Doc. 99–3946 Filed 2–17–99; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### National Historic Oregon Trail Interpretive Center Advisory Board; Renewal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** National Historic Oregon Trail Interpretive Center Advisory Board—Notice of Renewal.

**SUMMARY:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972, Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's National Historic Oregon Trail Interpretive Center Advisory Board.

The purpose of the Board will be to advise the Bureau of Land Management Vale District Manager regarding policies, programs, and long-range planning for the management, use, and further development of the Interpretive Center; establish a framework for an enhanced partnership and participation between the Bureau and the Oregon Trail Preservation Trust; ensure a financially secure, world-class historical and educational facility, operated through a partnership between the Federal Government and the community, thereby enriching and maximizing visitors' experiences to the region; and improve the coordination of advice and recommendations from the publics served.

**FOR FURTHER INFORMATION CONTACT:** Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW, Room 406 LS, Washington, DC 20240, telephone (202) 452–0377.

**Certification Statement**

I hereby certify that the renewal of the National Historic Oregon Trail Interpretive Center Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: February 9, 1999.

**Bruce Babbitt,**

*Secretary of the Interior.*

[FR Doc. 99–3927 Filed 2–17–99; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Notice of Proposed Relocation of Jeanne d'Arc Statue, Place de France, New Orleans, Louisiana; Comments Requested

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice; comment request.

**SUMMARY:** Public comment is sought on a request from the City of New Orleans, Louisiana to relocate the Place de France, a statue of Jeanne d'Arc and two bronze cannons, currently located in the median between the International Trade Mart Building and the former Rivergate, to a new location in the Vieux Carre (the French Quarter), a National Historic Landmark District.

**Background**

In 1971, the City of New Orleans, Louisiana (the ''City'') applied for a grant pursuant to the Housing and Urban Development Act of 1970, Public Law 91–609 (the ''Act'') to develop a park currently known as the Joan of Arc Plaza. The Plaza contains a gilded bronze statue of Jeanne d'Arc and two bronze cannons manufactured during the Napoleonic Empire donated to the City by the French Government.

As a result of construction adjacent to the Joan of Arc Plaza, the City, by letter dated October 29, 1998 from Mayor Marc H. Morial, has requested the Secretary to approve relocation of the Plaza, the statue and the cannons from the current location to the Decatur Street/North Peters Street Triangle in the Vieux Carre (the French Quarter), a National Historic Landmark District. This location was identified by the staff of the City Planning Commission in consultation with the staff of the City's Arts Council.

Section 705 of the Act provides that ''[n]o open-space land involving historic or architectural purposes for which assistance has been granted under this title shall be converted to use for any other purpose without the prior approval of the Secretary of the Interior.'' In *Louisiana Landmarks Society, Inc.* v. *City of New Orleans*, No.94–3880 (E.D. La. 1995), the court provided no standards by which to evaluate the historic purposes of the Place de France. The court, however, found that the term ''historic'' is not limited to property listed on, or eligible for listing on, the National Register pursuant to the National Historic Preservation Act of 1966, 16 U.S.C. 470. The Department of the Interior is accepting comments, pursuant to section 705 of the Act and this Notice, on whether the Secretary should approve relocation of the Place de France, together with the Jeanne d'Arc statue and two bronze cannons.

The Department is also accepting comments on the effect of locating the Place de France, together with the Jeanne d'Arc statue and two bronze cannons, to the designated site in the Vieux Carre (the French Quarter), a National Historic Landmark District. In selecting this site, the City took into consideration the following seven factors: (1) urban prominence; (2) scale/urban context; (3) visibility as a deterrent to potential vandalism; (4) pedestrian and vehicular safety; (5) suitability for designated functions; (6) stated wishes of identified interest groups; and (7) favorable comparison to the previous installation. The City further advises that in selecting this site, it has consulted with the French community in the City, with Consul General Mme. Lenoir-Bertrand and with Ambassador Francois Bujon de L'Estang.

**DATES:** The Department of the Interior will accept comments on these two actions through March 22, 1999.

**ADDRESSES:** Written comments should be submitted to: Ms. Juliette Falkner, Director, Office of Executive Secretariat,

Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ms. Geraldine Smith, Superintendent, Jean Lafitte National Historical Park and Preserve, 365 Canal Street, Suite 2400, New Orleans, Louisiana 70130–1142, (504) 589–3882 (not a toll free number).

**Brooks B. Yeagen,**

*Acting Assistant Secretary for Policy, Management and Budget, Department of the Interior.*

[FR Doc. 99–4027 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of Tribal-State Gaming Compacts Taking Effect.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing the Tribal-State Compacts between the following Tribes and the State of Michigan executed on December 3, 1998: The Little River Band of Ottawa Indians, the Little Traverse Bay Band of Odawa Indians, the Pokagon Band of Potawatomi Indians, and the Nottawasepi Huron Band of Potawatomi. By the terms of IGRA these Compacts are considered approved, but only to the extent the compacts are consistent with the provisions of IGRA.

**DATES:** This action is effective February 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: February 9, 1999.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 99–4005 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–020–09–1220–00]**

### Notice of Camping Limit on Public Land; Montana

**AGENCY:** Bureau of Land Management, Miles City and Billings Field Offices, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice establishes camping stay limits for public land administered by the BLM within the Miles City and Billings Field Office areas, Montana. Camping is defined as ''occupancy or holding for occupancy by placing private property used in connection with camping; such as but not limited to vehicles, trailers, structures, tents, stoves, chairs, notes or other personal items''. Persons may occupy for the purpose of camping any one site or multiple sites within a five mile radius on public lands not specifically closed to camping or otherwise restricted in writing for a period of fourteen (14) days within any 30 day period and also not to exceed 28 days in any period of one year. Following the 14 day continuous occupancy or 28 day maximum allowable use, the person(s) involved will have to relocate their camp beyond the five mile radius boundary. The 14 day limit may be reached either through a number of separate visits or through continuous occupancy of the site. Under special circumstances and upon written request, the authorized officer may give written permission for an extension to the 14 day limit. Exempted from this camping limit are administratively authorized personnel, law enforcement officers and fire/emergency personnel.

In addition, no person shall leave personal property unattended on public lands for a period of more than 72 hours without written permission from the authorized officer. Unattended personal property will be counted towards the 14 day continuous camp limit and/or the 28 day maximum camp limit. Any property left on public land beyond the camping or hours limit may be impounded by the authorized officer pending disposition in court.

**DATES:** Comments must be submitted on or before March 22, 1999.

**ADDRESSES:** Comments may be mailed or delivered to either of the following addresses: Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301 or Billings Field Office, 810 East Main, Billings, MT 59105.

**FOR FURTHER INFORMATION CONTACT:** Tim Murphy, Miles City Field Office Manager, phone (406) 233–2800 or Sandra Brooks, Billings Field Office Manager, phone (406) 238–1540.

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established in order to assist the BLM in reducing the incidence of long term occupancy trespass being conducted under the appearance of camping on public land within the Miles City Field Office. Of equal importance is the problem of exclusion, whereby long term camping at a given location will deny equal opportunities for other members of the public to camp in the same area/location. Authority for this action is contained in 43 CFR, Chapter II, Subpart 8365, 8365.1–2, 8365.1–6, and 8365.2–3.

Dated: February 5, 1999.

**Sandra Brooks,**

*Billings Field Manager.*

**Timothy M. Murphy,**

*Miles City Field Manager.*

[FR Doc. 99–3977 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–2, ''Personal Property Accountability Records.'' The revisions will add the Office of Surface Mining (OSM) and update the address(s) of the System Location and System Manager(s).

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381

Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817, or to U.S. Department of the Interior, Office of Surface Mining, ATTN: Privacy Act Officer, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Chief, Support Services Branch, Procurement and Support Services Division, Minerals Management Service, MS–2520, 381 Elden Street, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–2, ''Personal Property Accountability Records,'' to add OSM as a user of this system, and more accurately and clearly describe the address(s) of the System Location and System Manager(s). The revision reflects the addition of OSM including related address of the OSM System Manager, and a change of address in the Herndon, Virginia, System Manager location. Accordingly, the MMS proposes to amend the ''Personal Property Accountability Records,'' MMS–2 in its entirety to read as follows:.

**Robert E. Brown,**

*Asociate Director for Administration and Budget.*

**INTERIOR/MMS–2**

**SYSTEM NAME:**

Personal Property Accountability Records—Interior, MMS–2.

**SYSTEM LOCATION:**

This system is located in (1) Procurement and Support Services Division, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817; and (2) Administrative offices in substantially all field locations. A listing of field locations is available from the System Manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees of MMS and OSM who are accountable for Government owned controlled property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of assignment of an internal identification number and acknowledgment of receipts by employees. Records of transfers to other accountable employees. Inventory records containing employee social security numbers and duty stations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

40 U.S.C. 483(b).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of the records are to: (1) Maintain control over MMS-owned and controlled property; and (2) maintain up-to-date inventory and to record accountability for the property. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; made at the request of that individual; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) of Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant, or other benefit.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are both manual and computerized.

**RETRIEVABILITY:**

By employee social security number.

**SAFEGUARDS:**

Access by authorized employees only.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with General Records Schedule No. 23, Item No. 1.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Support Services Branch, Procurement and Support Services Division, Minerals Management Service. Mail Stop 2520, 381 Elden Street, Herndon, Virginia 20170–4817 and Chief, Office of Administration, Office of Surface Mining, 1951 Constitution Avenue, NW, Washington, DC 20240.

**NOTIFICATION PROCEDURE:**

Contact the System Manager or the pertinent field installation. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURES:**

Same as above or to the pertinent field installation for access. See 43 CFR 3.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Individual employees and property management personnel.

[FR Doc. 99–3928 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–3, ''Accident Reports and Investigations.'' The revisions will update the address(es) of the System Location and the System Manager.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this

revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Safety and Occupational Health Manager, Procurement and Support Services Division, Minerals Management Service, MS–2520, 381 Elden Street, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–3, ''Accident Reports and Investigations,'' to more accurately and clearly describe the address of the System Manager. The revision reflects a change of address in the Herndon, Virginia, System Manager location.

Accordingly, the MMS proposes to amend the ''Accident Reports and Investigations,'' MMS–3 in its entirety to read as follows:

**Robert E. Brown,**

*Associate Director for Administration and Budget.*

### INTERIOR/MMS–3

**SYSTEM NAME:**

Accident Reports and Investigations—Interior, MMS–3.

**SYSTEM LOCATION:**

Procurement and Support Services Division, Minerals Management Service, Mail Stop 2520, 381 Elden Street, Herndon, Virginia 20170–4817.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All personnel of the Minerals Management Service (MMS) who have had on-the-job accidents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Form DI–134, Accident Reports, correspondence, historical information, and corrective action reviews relating to accidents which have occurred on-the-job.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7902.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of the records are: (1) To maintain records of accidents in which MMS employees have been involved; (2) to report statistics and trends to the Department; (3) to monitor and report progress of the safety program in the MMS, using historical data and records of actions taken. Disclosure outside of the Department may be made: (1) To the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the status, rule, regulation, order, or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) of Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance license, contract, grant, or other benefit.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in manual form in file folders.

**RETRIEVABILITY:**

By name of individual.

**SAFEGUARDS:**

Kept in locked cabinet. Access limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with General Records Schedule No. 18, Item No. 12.

**SYSTEM MANAGER(S) AND ADDRESS:**

Safety and Occupational Health Manager. Procurement and Support Services Division, Minerals Management Service, Mail Stop 2520, 381 Elden Street, Herndon, VA, 20170–4817.

**NOTIFICATION PROCEDURE:**

A written and signed request stating that the requester seeks information concerning records pertaining to him or her must be addressed to the System Manager. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURE:**

A request for access must be in writing, signed by the requester, submitted to the Systems Manager, and meet the requirements of 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment shall be addressed to the System Manager and meet the requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Accident victims, witnesses, supervisors, and investigators.

[FR Doc. 99–3929 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–4, ''Personnel Security System.'' The revision identifies an organizational change and updates the address of the System Manager.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN:

MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Security Personnel Officer Chief, Office of Administration and Budget, Minerals Management Service, MS–2400, 381 Elden Street, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–4, ''Personnel Security System,'' to identify an organizational change and more accurately and clearly describe the address of the System Manager. The revisions reflect a change of address in the Herndon, Virginia, System Manager location.

Accordingly, the MMS proposes to amend the ''Personnel Security System,'' MMS–4 in its entirety to read as follows:

**Robert E. Brown,**

*Associate Director for Administration and Budget.*

**INTERIOR/MMS–4**

**SYSTEM NAME:**

Minerals Management Service (MMS) Personnel Security System—Interior, MMS–4.

**SYSTEM LOCATION:**

Department of the Interior, Minerals Management Service (MMS), Office of Administration and Budget, Personnel Division, Mail Stop 2400, 381 Elden Street, Herndon, Virginia 20170–4817.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former Minerals Management Service (MMS) employees and contract employees working for the MMS who: (1) Have been subject to personnel security investigations to determine suitability for placement in sensitive positions, require access to national security information, and/or require ADP access authorization and/or (2) require access to MMS buildings or individual offices.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, sensitivity type, date of birth, place of birth, social security number, organization code, position title, grade, duty station, Office of Personnel file folder location (OPF), clearance, clearance date, access, clearance termination date, ADP type, grant date, ADP termination date, briefing information, suitability date, investigation basis, Agency conducting investigation, investigation completion date, investigation update and upgrade information. MMS termination date, pending code, remarks. For building passes and keys the height, weight, hair and eye color and employment status information is required. The automated portion of this system is only a compilation of records manually maintained.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10501; 40 U.S.C. 486(c); 41 CFR 101–201.103.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records is to (1) Ensure that investigative requirements of Federal Personnel Manual 731 are satisfied and to provide a current record of MMS employees with clearance and ADP access authorization; and (2) provide access cards and keys to MMS buildings and offices. Disclosure outside of the Department may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contract, grant or other benefit, and (5) to Federal State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant or other benefit; (6) to the Office of Personnel Management for matters concerned with oversight activities necessary for the Office to carry out its legally authorized Governmentwide personnel management programs and functions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Manual systems are maintained in locked GSA approved security containers. Automated data base system maintained on hard disk with password entry required.

**RETRIEVABILITY:**

Indexed by individual name or social security number.

**SAFEGUARDS:**

Maintained within the Personnel Division meeting the requirements of 43 CFR 2.51.

**RETENTION AND DISPOSAL:**

These records are maintained in accordance with the General Records Schedule Number 18, Item Number 23.

**SYSTEM MANAGER(S) AND ADDRESS:**

Personnel Security Officer, Office of Administration and Budget, Minerals Management Service, Mail Stop 2400, 381 Elden Street, Herdon, Virginia 20170–4817

**NOTIFICATION PROCEDURE:**

Inquires regarding the existence of records should be addressed to the Personnel Security Officer. A signed request is required if an individual would like information concerning his/her records. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURE:**

A request for access may be addressed to the Personnel Security Officer. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the Personnel Security Officer and must meet the requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Individual on whom record is maintained.

[FR Doc. 99–3930 Filed 2–17–99; 8:45 am]

**BILLING CODE 4910–94–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–5, ''Telephone/Employee Locator Systems (TELS).'' The revision will update the address(s) of the System Location and the System Manager.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments addressed are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Chief, Support Services Branch, Procurement and Support Services Division, Minerals Management Service, MS–2520, 381 Elden Street, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–5, ''Telephone/Employee Locator System (TELS),'' to more accurately and clearly describe the address(s) of the System Location and the System Manager. The revision reflects a change of address in the Herndon, Virginia, System Manager location.

Accordingly, the MMS proposes to amend the ''Telephone/Employee Locator System (TELS),'' MMS–5 in its entirety to read as follows:

**Robert E. Brown,**

*Associate Director for Administration and Budget.*

#### INTERIOR/MMS–5

**SYSTEM NAME:**

Telephone/Employee Locator System (TELS)—Interior, MMS–5.

**SYSTEM LOCATION:**

Procurement and Support Services Division, Minerals Management Service, Mail Stop–2520, 381 Elden Street, Herndon, Virginia, 20170–4817, and Administrative Service Centers.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Minerals Management Service (MMS) employees Service-wide, and contractor personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Names of individual employees and contractor employees, social security numbers, grades, office telephone, building codes, room numbers, mail stop codes, tenures, work schedules, organization codes, and home zip codes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of these records are: (1) To prepare MMS telephone directories; (2) ride sharing; (3) to prepare space occupancy reports; (4) to show change in employees position status and location; (5) to monitor telephone inventories. Disclosure outside of the Department may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purposes for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contract, grant, or other benefit; and (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in manual and computerized form.

**RETRIEVABILITY:**

By name or social security number or telephone number

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with Records Management Handbook, MMSM 380.2–H, 401–01.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Support Services Branch, Procurement and Support Services Division, Minerals Management Service, Mail Stop 2520, 381 Elden Street, Herndon, Virginia, 20170–4817.

**NOTIFICATION PROCEDURES:**

A written and signed request stating that the expense seeks information concerning records pertaining to him or her must be addressed to the System Manager. See CFR 2.60.

**RECORD ACCESS PROCEDURES:**

A request for access should be addressed to the System Manager. See 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

Contact the System Manager. See 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Individuals on whom records are kept.

[FR Doc. 99–3931 Filed 2–12–99; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–8, ''Advanced Budget/Accounting Control and Information System (ABACIS).'' The revisions will identify an organizational change, update the address(es) of the System Location and the System Manager, and add CD–ROM as a storage media.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Chief, Financial Management Branch, Minerals Management Service, Mail Stop 2300, 381 Elden St., Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–8, ''Advanced Budget/Accounting Control and Information System (ABACIS),'' to more accurately and clearly describe the address(es) of the System Location and the System Manager. The revision reflects an organizational change, a change of address in the Herndon, Virginia, System Manager location, adds CD–ROM as an additional storage media. Accordingly, the MMS proposes to amend the ''Advanced Budget/Accounting Control and Information System (ABACIS),'' MMS–8 in its entirety to read as follows:

**Robert E. Brown,**

*Associate Director for Administration and Budget.*

#### INTERIOR/MMS–8

**SYSTEM NAME:**

Advanced Budget/Accounting Control and Information System (ABACIS)—Interior, MMS–8.

**SYSTEM LOCATION:**

Department of the Interior, Minerals Management Service, Office of Administration and Budget, Chief, Financial Management Branch, Mail Stop 2300, 381 Elden St., Herndon, Virginia, 20170–4817.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All debtors including employees, former employees, persons paying for goods or services, returning overpayments, or otherwise delivering cash, business firms, private citizens and institutions. Some of the records in the system pertain to individuals and may reflect personal information. Only the records reflecting personal information are subject to the Privacy Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individuals' name, Social Security Number, address amount owed by or to, goods or services purchased, overpayment, check number, date and treasury deposit number, awards, advances, destination, itineraries, modes and purposes of travel, expenses, amount claimed and reimbursed, travel orders, vouchers, and information pertaining to an amount owed on an outstanding or delinquent travel advance.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

(1) 5 U.S.C. 5514 (2) 31 U.S.C. 3511 (3) 5 U.S.C. 5701–09 (4) 31 U.S.C. 3701, 3711, 3717, 3718, (5) U.S.C. 3512.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of the records are (a) To account for monies paid and collected by the Minerals Management Service, Financial Management Branch, and for billing and followup; (b) to account for travel advances; (c) to compute vouchers to determine amounts claimed and reimbursed; (d) to account for travel orders, maintain records of modes and purposes of travel and itineraries. Disclosure outside the Department of the Interior may be made (1) To the U.S. Department of Justice or in a proceeding before a court of adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) to disclose pertinent information to an appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual; (4) to the Department of the Treasury to effect payment of Federal, State, and local government agencies, nongovernmental organizations, and individuals; (5) to the Federal Agency for the purpose of collecting a debt owed the Federal Government through administrative or salary offset; (6) to other Federal Agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals; (7) to a Federal Agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; and (8) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit; (9) to disclose debtor information to the IRS, or another Federal agency or its contractor solely to aggregate information for the IRS, to collect debts owed to the Federal government through the offset of tax results.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained on computer media with input forms and printed output in manual form, microfilm, and CD–ROM.

**RETRIEVABILITY:**

Indexed by name, social security number, travel order number, data, appropriations, or fund to be audited.

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computer and manual records.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with General Records Schedule No. 7, Item Nos. 1–4 and in accordance with GSA Federal Travel Regulations.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Financial Management Branch, Minerals Management Service, Mail Stop 2300, 381 Elden St., Herndon, Virginia 20170–4817.

**NOTIFICATION PROCEDURES:**

Inquires regarding the existence of a record should be addressed to the System Manager. A written signed request stating that the individual seeks information concerning his/her records is required (43 CFR 2.60).

**RECORD ACCESS PROCEDURES:**

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Debtor, accounting records, individual remitters, supervisors and standard office references.

[FR Doc. 99–3932 Filed 2–17–99; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–9, ''Employee Counseling Services Program.'' The revision identifies an organizational change and updates the address of the System Manager.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:**

Chief, Equal Employment and Development Opportunity Division, Minerals Management Service, 381 Elden Street, Mail Stop 2900, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–9, ''Employee Counseling Services Program,'' to identify an organizational change and more clearly define the address of the System Manager. The revision reflects a change of organization and address at the Herndon, Virginia, System Manager location.

Accordingly, the MMS proposes to amend the ''Employee Counseling Services Program,'' MMS–9 in its entirety to read as follows:

**Robert E. Brown,**

*Associated Director for Administration and Budget.*

**INTERIOR/MMS–9**

**SYSTEM NAME:**

Employee Counseling Services Program—Interior, MMS–9.

**SYSTEM LOCATION:**

This system of records is located with the contractor providing counseling services.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Minerals Management Service employees, former employees, and their family members who seek, are referred, and/or receive assistance through the Employee Counseling Services Program. The records contained in this system which pertain to individuals contain principally personal and/or medical information. These records are subject to the Privacy Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in this system include documentation of visits to employee counselor (Employee Counseling Services Program Counselor) and the problem assessment, recommended plan of action to correct the major issue, referral to community or private resource for assistance with personal problems, referral to community or private resource for rehabilitation or treatment, results of referral, and other notes or records of discussions held with the employee made by the Employee Counseling Services Program Counselor. Additionally, records in this system may include documentation of treatment by a therapist or at a Federal, State, local government, or private institution.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

(1) 42 U.S.C. 290dd–1; (2) 42 U.S.C. 290ee–1.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

The primary use of these records is to counsel and refer employees and/or their family members with personal or medical problems. These records and information may be used to disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient

identities in any matter (when such records are provided to qualified researchers employed by the Department of the Interior, all patient identifying information will be removed).

**Note**.—Disclosure of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2. Disclosure of records pertaining to the physical and mental fitness of employees are, as a matter of Department policy, afforded the same degree of confidentiality.

**POLICIES AND PRACTICES FOR STORAGE, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in folders in file cabinets.

**RETRIEVABILITY:**

Indexed by name of individual on whom they are maintained.

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual records.

**RETENTION AND DISPOSAL:**

These records are retained and disposed of in accordance with General Records Schedule No. 1, Item No. 27.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Equal Employment and Development Opportunity Division, Minerals Management Service, 381 Elden Street, Mail Stop 2900, Herndon, Virginia 20170–4817.

**NOTIFICATION PROCEDURES:**

Inquiries regarding the existence of a record should be addressed to the System Manager. A written signed request stating that the individual seeks information concerning his/her records is required (43 CFR 2.60).

**RECORDS ACCESS PROCEDURES:**

A request for access may be addressed to the System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employee Counseling Services Program staff who records the counseling session, and the therapists or institutions used as referrals or providing treatment.

[FR Doc. 99–3933 Filed 2–17–99; 8:45 am]
**BILLING CODE 4310–93–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Privacy Act of 1974; as Amended; Revisions to the Existing System of Records

**AGENCY:** Minerals Management Service, Department of the Interior.

**ACTION:** Proposed revisions to an existing system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 522a), the Minerals Management Service (MMS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, MMS–12, ''Lessee/Operator Training Files.'' The revisions will update the organization titles and address(s) of the System Location and the System Manager.

**EFFECTIVE DATE:** 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, 381 Elden Street, Herndon, Virginia 20170–4817. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

**ADDRESSES:** Send written comments to U.S. Department of the Interior, Minerals Management Service, ATTN: MMS Privacy Act Officer, MS–2200, Herndon, Virginia 20170–4817.

**FOR FURTHER INFORMATION CONTACT:** Chief, Operations Analysis Branch, Offshore Engineering and Operations Division, Offshore Minerals Management, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

**SUPPLEMENTARY INFORMATION:** The MMS is proposing to amend the system notice for MMS–12, ''Lessee/Operator Training Files,'' to identify the new organization titles and more accurately and clearly describe the address(s) of the System Location and the System Manager. The revision reflects a change of address in the Herndon, Virginia, System Manager location.

Accordingly, the MMS proposes to amend the ''Lessee/Operator Training Files,'' MMS–12 in its entirety to read as follows:

**Robert E. Brown,**

*Associate Director for Administration and Budget.*

**INTERIOR/MMS–12**

**SYSTEM NAME:**

Lessee/Operator Training Files—MMS–12.

**SYSTEM LOCATION:**

Operations Analysis Branch, Offshore Engineering and Operations Division, Offshore Minerals Management, Minerals Management Service, Mail Stop 4910, 381 Elden Street, Herndon, Virginia 20170–4817.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Personnel who have participated in well control, safety device, workover and well completion training programs.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records of student certification consist of the name, social security number, job certification, blowout preventor stack qualification, test score, course type, completion date, school name, school location, and instructor.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

43 U.S.C. 1332(b).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary uses of the records are for training and certification pertaining to the structure, management and operation of the production drilling well control, safety device, and workover and well completion/well control training programs. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation

and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, or order or license; (3) to a Congressional office from the record of an individual in response to any inquiry the individual has made to the Congressional office.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in computerized form.

**RETRIEVABILITY:**

Indexed by social security number or MMS identifier.

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for computerized records.

**RETENTION AND DISPOSAL:**

Determination of the disposition is pending approval of the archivist.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Operations Analysis Branch, Offshore Engineering and Operations Division, Offshore Minerals Management, Minerals Management Service, Mail Stop 4810, 381 Elden Street, Herndon, Virginia 20170–4817.

**NOTIFICATION PROCEDURE:**

A written request addressed to the System Manager stating that the requester seeks information concerning records pertaining to him/her is required. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURES:**

A request for access may be addressed to the System Manager. The request must be in writing, and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Training organizations.

[FR Doc. 99–3934 Filed 2–17–99; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Privacy Act of 1974, as Amended; Systems of Records

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of deletion of 11 systems of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting 11 systems of records managed by the Bureau of Reclamation (Reclamation).

**DATES:** These actions will be effective February 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Casey Snyder, Reclamation Privacy Act Officer, at (303) 445–2048.

**SUPPLEMENTARY INFORMATION:** Recent Privacy Act Compilations list the following systems of records with a prefix of ''Reclamation'' (e.g., Reclamation-25). When originally published in the **Federal Register** these systems of records were identified with an organization prefix of ''WBR'' or ''LBR'' (e.g., WBR–1, LBR–34). The content of the systems of records is the same; the prefixes on these systems were changed to reflect organizational changes.

The systems of records being deleted and the reasons for deletion are listed below:

1. Interior/WBR–1, ''Occupational Illness, Accidents, and Related Property Damage,'' previously published in the **Federal Register** on July 24, 1984 (49 FR 29850). The information kept in this system of records is now covered under Interior/OS–60, ''Safety Management Information System.''

2. Interior/WBR–3, ''Attendance at Meetings,'' previously published in the **Federal Register** on July 24,1984 (49 FR 29850). The information kept in this system of records is now covered under Interior/OS–58, ''Administrative Operations Records on Employees, Department System.''

3. Interior/WBR–4, ''Audiograms (Hearing Test Records),'' previously published in the **Federal Register** on July 24, 1984 (49 FR 29851). The information kept in this system of records is now covered under Office of Personnel Management—OPM/GOVT–10, ''Employee Medical File System Records.''

4. Interior/LBR–9, ''Foreign Visitors and Observers,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19097). The information kept in this system of records is no longer accessed by individuals' names or other personal identifiers. The records kept under this system were temporary and have been disposed of in accordance with approved Retention and Disposal Schedules.

5. Interior/LBR–16, ''Litigation,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19099). Reclamation no longer maintains this system of records. There are no records in this system. Previous records were disposed of in accordance with approved Retention and Disposal Schedules.

6. Interior/LBR–18, ''Lease of Housing,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19100). The information kept in this system of records is now covered under Interior/OS–58, ''Administrative Operations Records on Employees, Department System.''

7. Interior/LBR–20, ''Movable Property ADP Records,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19100). The information kept in this system is now covered under Interior/OS–58, ''Administrative Operations Records on Employees, Department System.''

8. Interior/LBR–21, ''Movable Property Individual Responsibility,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19101). The information kept in this system is now covered under Interior/OS–58, ''Administrative Operations Records on Employees, Department System.''

9. Interior/LBR–26, ''Photographic Files,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19103). We have determined that the information kept in this system does not contain Privacy Act information. Therefore, this system of records is being deleted.

10. Interior/LBR–33, ''Speeches,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19105). We have determined that the information kept in this system does not contain Privacy Act information. Therefore, this system of records is being deleted.

11. Interior/LBR–47, ''Employees'' Compensation Records,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19109). The information kept in this system is now covered under Interior/OS–58, ''Administrative Operations Records on Employees, Department System;'' Interior/OS–72, ''FECA Chargeback Case File;'' and Office of Personnel Management—OPM/GOVT–10,

''Employee Medical File System Records.''

**Murlin Coffey,**

*Manager, Property and Office Services.*

[FR Doc. 99–3951 Filed 2–17–99; 8:45 am]

BILLING CODE 4310–94–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–A (Review) and 731–TA–157 (Review)]**

### Carbon Steel Wire Rod From Argentina

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of Commission determination to conduct full five-year reviews concerning the suspended countervailing duty investigation and the antidumping duty order on carbon steel wire rod from Argentina.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether termination of the suspended countervailing duty investigation or revocation of the antidumping duty order on carbon steel wire rod from Argentina would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm*.

**EFFECTIVE DATE:** February 4, 1999.

**FOR FURTHER INFORMATION CONTACT:** George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** On February 4, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. With respect to both the suspended countervailing duty investigation and the antidumping duty order, the Commission found that both domestic and respondent interested party group responses to its notice of institution (63 F.R. 58756, Nov. 2, 1998) were adequate and voted to conduct full reviews. A record of the Commissioners' votes and individual Commissioner's statements, if any, are available from the Office of the Secretary and at the Commission's web site.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 11, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–3963 Filed 2–17–99; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that a proposed consent decree in the case of *United States* v. *Independent Steel Castings Company*, Civil Action No. 3:99–CV–0019, was lodged on January 11, 1999 with the United States District Court for the Northern District of Indiana, South Bend Division. The proposed consent decree resolves the United States' claims against defendant Independent Steel Castings Company for past costs incurred in connection with the Waste, Inc. Superfund Site located in Michigan City, LaPorte County, Indiana, in return for a total payment of $60,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Independent Steel Castings Company*, DOJ Ref. No. 90–11–3–1376/3.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–3909 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Judgment Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent judgment in *United States* v. *J.S. Alberici Construction Co., Inc.*, Civil Action No. 4:99CV00071 (CAS) (E.D. Mo.), was lodged with the United States District Court for the Eastern District of Missouri on January 19, 1999.

The proposed consent judgment would resolve the United States' allegations in the above-referenced enforcement action that Defendant violated Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully placing a barge and approximately 13,000 cubic yards of fill material into the Mississippi River in St. Louis, Missouri, for the purpose of repairing a loading dock area.

The proposed consent judgment would require Defendant to pay a $400,000 civil penalty and to either: (1) restore the site immediately; or (2) apply for a permit to allow the fill to remain in place. If the Corps grants the permit and Defendant accepts the terms and conditions of the permit, such terms and conditions shall become requirements of the consent judgment. If, however, the Corps denies the permit or Defendant rejects the terms of the permit, Defendant shall comply with the restoration requirements of the consent judgment. The consent judgment would

also require Defendant to continue an ongoing environmental educational program for its employees and to prepare a 30-minute video on the requirements of the Clean Water Act and Rivers and Harbors Act.

The Department of Justice will accept written comments relating to the proposed consent judgment for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *J.S. Alberici Construction Co., Inc.*, DJ Reference No. 90–5–1–1–05215.

The proposed consent judgment may be examined at either the Clerk's Office of the United States District Court for the Eastern District of Missouri, 1114 Market Street, Room 260, St. Louis, Missouri, or the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, DC 20005. Requests for a copy of the consent judgment may be mailed to the Consent Decree Library at the above address and must include a check in the amount of $2.50.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.*

[FR Doc. 99–3915 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Comprehensive and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on January 29, 1999, a proposed Consent Decree in *Lake County Treasurer* v. *Parcels of Land* (Lake Underground Storage Corp., et al), Civ. Action Nos. 1:97CV1894 and 1:98CV1220, was lodged with the United States District Court for the Northern District of Ohio. This Consent Decree represents a settlement of cross-claims of the United States against Lake Underground Storage Corporation and Nacelle Land and Management Corporation (collectively ''Settling Defendants''), for reimbursement of response costs in connection with the Lake Underground Storage Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 et seq. Under this settlement with the United States, Settling Defendants will pay $164,000, plus interest, in reimbursement of response costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Lake County Treasurer* v. *Parcels of Land (Lake County Underground Storage Corp., et al*), D.J. Ref. 90–11–6–157A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Ave., East Cleveland, Ohio 44114, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW. 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check payable to the Consent Decree Library in the amount of $7.25 (25 cents per page reproduction cost) for a copy of the Consent Decree.

**Joel Gross,**

*Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 99–3911 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Consent Decree Pursuant to the Federal Water Pollution Control Act State Law

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *In Re Montauk Oil Transportation Corp.*, Civil Action Number 90 Civ. 502 (KMW), DOJ #90–5–1–1–3918, was lodged in the United States District court for the Southern District of New York on January 26, 1999. The consent Decree resolves the liability of Montauk, certain, shareholders of Montauk, Bouchard Transportation Co., Inc., and Northeast Petroleum under Sections 309 and 311 of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1319 and 1321 and state laws relating to the March 6, 1990 oil spill in the New York harbor.

Under the Consent Decree Montauk agrees to a judgment against Montauk of $1.35 million and the United States, the States of New York and New Jersey, and the City of New York, jointly will receive a total of $500,000 in natural resource damages from Montauk and certain Montauk shareholders. New Jersey will receive an additional $50,000 from Bouchard Transportation Co., Inc. pursuant to New Jersey law. The United States will also receive a penalty payment of $25,000 for violation of the Federal Water Pollution Control Act. The Consent Decree specifies that it is an enforceable judgment against Montauk thereby permitting the Governments to pursue additional Montauk shareholders who did not participate in this settlement.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In Re Montauk Oil Transportation,* DOJ #90–5–1–1–3918.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of New Jersey, 100 Church Street, 19th Floor, New York, New York; and at the Consent Decree Library, 1120 G Street, NW, 3d Floor, Washington, DC 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3d Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–3913 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Tsacaba Shipping Co., et al.,* Civil Action No. 96–1556–CIV–T–

23E was lodged on January 28, 1999, with the United States District Court for the Middle District of Florida. In August 1993, the United States filed this action pursuant ot the Oil Pollution Act of 1990, 33 U.S.C. 2701–2761 to recover response costs, assessment costs and natural resource damages arising from an oil spill in the waters of Tampa Bay, Florida. The Florida Department of Environmental Protection (FDEP) also filed a complaint against these defendants in state court and sought damages and costs arising from the spill. This oil spill occurred as a result of collisons in the waters of Tampa Bay, Florida, on August 10, 1993, between the M/V BALSA 37 and tug and barge SEAFARER/Barge OCEAN 255, and between the M/V BALSA 37 and the tug and tow CAPT FRED BOUCHARD/Barge B No. 155.

Under this settlement, the defendants will pay to the United States and FDEP the amount of $8,000,000. This amount includes; reimbursement of response costs to the U.S. Coast Guard in the amount of $2,213,624 and to FDEP in the amount of $257,735; reimbursement of assessment costs to the National Oceanic and Atmospheric Administration (NOAA) in the amount of $920,447, to the U.S. Department of Interior (DOI) in the amount of $73,253, and to the FDEP in the amount of $920,447. In addition, the $8,000,000 includes amounts to be administered by the federal and state trustees (NOAA, DOI, and FDEP) for natural resource damages sustained as a result of the oil spill. Specifically, the defendants will pay $1,001,799 to provide compensation for ecological damages as a result of the oil spill including injuries to birds, sea turtles, sediments, water column, and beach sand; and the defendants will pay $2,500,000 to be administered by the trustees to compensate for recreational beach use losses as a result of the oiling of St. Petersburg beaches in the summer of 1993. In addition, the Defendants have agreed to implement salt marsh restoration in Boca Ciega Bay in accordance with an agreed upon restoration plan.

Finally, the defendants have purchased an 11-acre parcel of land in Pinellas County, Florida (Cross Bayou), which will be deeded into public ownership. The defendants have agreed to implement a mangrove restoration plan on Cross Bayou as off-site restoration compensation for mangrove damages sustained as a result of the spill. Cross Bayou will be deed restricted so that only outdoor recreational or conservation uses are permitted on the property.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *Tsacaba Shipping Co., et al.* DOJ Ref. #90–5–1–1–5041.

The proposed consent decree may be examined at the Office of the United States Attorney, Middle District of Florida, Suite 3200, North Tampa Street, Tampa, Florida 33602; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel Gross,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–3912 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *USX Corp., et al.*, Civil No. 98 C 6389 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on February 4, 1999, pertaining to the Yeoman Creek Landfill Superfund Site (the ''Site''), located in Waukegan, Lake County, Illinois. The proposed consent decree would resolve the United States's civil claims against seven ''Settling Work Defendants'' and three ''Settling Cash Defendants'' as provided in the consent decree. The Settling Work Defendants are Browning-Ferris Industries, Inc.; Browning-Ferris Industries of Illinois, Inc.; the City of Waukegan, Illinois; The Goodyear Tire & Rubber Company; The Dexter Corporation; Waukegan Community School District No. 60; and Outboard Marine Corporation. The Settling Cash Defendants are Fansteel, Inc.; Abbott Laboratories; and the City of North Chicago, Illinois. The proposed consent decree also would resolve the alleged Site-related liability of two ''Settling Federal Agencies,'' the Department of the Navy and the Department of Veterans Affairs.

Under the proposed consent decree, the Settling Work Defendants would commit to perform the remedy selected in the Environmental Protection Agency's Record of Decision for the Site, at an estimated cost of $26.3 million. The Settling Cash Defendants and the Settling Federal Agencies would contribute a total of $4,761,500.00 toward the costs of that work.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corp., et al.*, Civil No. 98 C 6389 (N.D. Ill.), and DOJ Reference No. 90–11–2–1315/1.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, IL 60604; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Stuart Hersh (312–886–6235)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $21.50 for the consent decree only (86 pages at 25 cents per page reproduction costs), or $77.00 for the consent decree and all appendices (308 pages), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–3910 Filed 2–17–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in the consolidated action entitled *United States of America* v. *Western Publishing Co., Inc., et al.,* Civil Action No. 94–CV–1247 (LEK/DNH) and *State of New York* v. *F.I.C.A. a/k/a Dutchess Sanitation Services, Inc., et al.,* Civil Action No. 86–CV–1136 (LEK/DNH) (N.D.N.Y.), was lodged on January 22, 1999, with the United States District Court for the Northern District of New York. The proposed partial consent decree resolves claims of the United States, on behalf of the U.S. Environmental Protection Agency, and the State of New York against fourth-party Dupont Semiconductor Products, Pawling Corporation, H.O. Penn Machinery Co., Inc., Schatz Bearing Corp., Rao's Suburban Sanitation, Inc., Royal Carting of Dutchess County, Inc., M & G Sanitation Corp., and Great Eastern Color Lithographic Corp., under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675 (''CERCLA''). These claims are for recovery of response costs incurred and to be incurred by the United States in connection with the Hertel Landfill Superfund Site (''Site''), located in the Hamlet of Clintondale, Town of Plattekill, Ulster County, New York

Under the terms of the proposed partial consent decree, the settling defendants will pay to the United States $275,000 in reimbursement of past response costs incurred by the United States, and a 15% premium on such payment to be applied toward future remedial action costs to be incurred with respect to the Site. The remedial action is to be performed by other settling defendants under a separate partial consent decree related to the resolution of this litigation and lodged concurrently herewith, providing performance of the remedial design and remedial action set forth in the September 27, 1991 Record of Decision for the Site. The instant proposed partial consent decree provides the settling defendants with releases for civil liability under Sections 106 and 107(a) of CERCLA relating to the Site as consideration for the payments to be made.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Western Publishing Co., Inc., et al.,* Civil Action No. 94–CV–1247 (LEK/DNH) and *State of New York* v. *F.I.C.A. a/k/a Dutchess Sanitation Services, Inc., et al.,* Civil Action No. 86–CV–1136 (LEK/DNH) (N.D.N.Y.), DOJ Ref. No. 90–11–2–767A.

The proposed partial consent decree may be examined at the Office of the United States Attorney, 445 Broadway, Room 231, Albany, New York 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.25 (25 cents per page reproduction costs) made payable to Consent Decree Library.

**Joel M. Gross,**

*Chef, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–3914 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium (ALABC)

Notice is hereby given that, on January 11, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Lead-Acid Battery Consortium (''ALABC''), a program of International Lead Zinc Research Organization, Inc., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Banner Batterien GmbH, Linz, AUSTRIA and Curtis Instruments, Inc., Mount Kisco, NY, have been added as parties to this venture; and Electrosource, Inc., Austin, TX has been withdrawn as a party to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ALABC intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, ALABC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on October 13, 1998. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3922 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aerospace Vehicle Systems Institute (''AVSI'') Cooperative

Notice is hereby given that, on November 18, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Aerospace Vehicle Systems Institute (''AVSI'') Cooperative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Texas Engineering Experiment Station, a component of the Texas A&M University System, College Station, TX; Allied Signal, Inc., Bellevue, WA; Boeing Company, acting through its division, Boeing Commercial Airplane Group, Seattle, WA; Hamilton Standard Division, United Technologies Corporation, Windsor Locks, CT; Honeywell, Inc., Phoenix, AZ; Moog Inc., East Aurora, NY; Parker Hannifin

Corporation, acting through its Parker Aerospace Division, Irvine, CA; Rockwell Collins Inc., Cedar Rapids, IA; and Sundstrand Corporation, acting through its Sundstrand Aerospace Division, Rockford, IL. The nature and objectives of the venture are to accelerate development of new system architectures, components and processes that satisfy the need for ''faster, cheaper, better'' commercial aircraft in areas where joint development of new technologies and processes is appropriate.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3920 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, Inc.—''Hot Metal Gas Forming''

Notice is hereby given that, on December 21, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Atlas Technologies, Inc., Fenton, MI; Auto Body Consortium, Inc., Ann Arbor, MI; Autodesk, Inc., Novi, MI; Battelle Memorial Institute, Columbus, OH; Chrysler Corporation, Auburn Hills, MI; Cooperweld, Piqua, OH; Erie Press Systems, Erie, PA; Ford Motor Company, Dearborn, MI; Hydrodynamics Technologies, Inc., Auburn Hills, MI; Lamb Technicon, Warren, MI; Rockwell Automation, Milwaukee, WI; Sekely Industries, Inc., Salem, OH; TOCCO, Inc., Madison Heights, MI; Tower Automotive, Milwaukee, WI; and Wayne State University, Detroit, MI. The nature and objectives of the venture are to increase the competitiveness of the U.S. vehicle structural component and tooling suppliers and allied industries through lower product piece and tooling cost, faster tooling time, and lower vehicle weight through the development of ''Hot Metal Gas Forming'', an innovative metalforming technique to produce tubular structural components.

**Constance K. Robinson,**

*Director of Operatives, Antitrust Division.*

[FR Doc. 99–3918 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993–Consortium for Non-Contact Gauging (''CNCG'')

Notice is hereby given that, on November 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Non-Contact Gauging (''CNCG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Industrial Technology Institute (''ITI''), Ann Arbor, MI has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Consortium for Non-Contact Gauging (''CNCG'') intends to file additional written notification disclosing all changes in membership.

On March 7, 1995, Consortium for Non-Contact Gauging (''CNCG'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 24, 1995 (60 FR 27559).

The last notification was filed with the Department on July 23, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51954).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3923 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—H Power Corporation/ Arthur D. Little, Inc.

Notice is hereby given that, on December 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), H Power Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are H Power Corporation, Belleville, NJ; and Arthur D. Little, Inc., Cambridge, MA.

The nature and objectives of the venture are to develop and demonstrate a propane-fueled fuel cell power system for telecommunications applications.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3917 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—KLA-TENCOR Corporation (''KLA-TENCOR''): Intelligent Mask Inspection System

Notice is hereby given that, on December 22, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the KLA-Tencor Corporation: Intelligent Mask Inspection System has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are KLA-Tencor Corporation, San Jose, CA; Lucent Technologies Inc., Murray Hill, NJ; Photronics, Inc.,

Brookfield, CT; and DuPont Photomasks, Inc., Austin, TX. The nature and objectives of the venture are to develop and demonstrate an intelligent mask inspection system for next generation lithography for use in the semiconductor industry.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3921 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993–Microelectronics and Computers Technology Corporation (''MCC'')

Notice is hereby given that, on March 18, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Texas Instruments, Dallas, TX, has become an MCC shareholder. The Boeing Company, Seattle, WA; Hughes Research Lab (HRL, L.L.C.), Malibu, CA; and Hughes Electronics, El Segundo, CA have become associate members. Raytheon, Lexington, MA, recently acquired the Hughes Aircraft Company portion of GM Hughes and will become the MCC shareholder. SAIC, San Diego, CA, recently merged with Bellcore and is in the process of obtaining Bellcore's share and will become the MCC shareholder. Ceridian Corporation has transferred its MCC share to General Dynamics, Falls Church, VA. BBN Corporation, Pacific Sierra Research Corporation, Eastman Chemical Company and Nationsbank have declined to rejoin MCC. Schlumberger, San Jose, CA; and VLSI, San Jose, CA are being listed as 1998 project participants.

Lucent, 3M, Nokia, Nortel, Intel, Motorola and Hewlett-Packard have joined the Loc Cost Portables Project. Raytheon and Schlumberger have joined the Infosleuth II Project. Honeywell has joined the Quest Project. Motorola and Nokia have joined the ProReal Visual Prototyping Project. Raytheon has joined the Object Infrastructure Project. VLSI Technology has joined the Server and Network Technology Project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and intends to file additional written notification disclosing all change in membership.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on October 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 8, 1998 (63 FR 17214).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3919 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Semiconductor Corporation

Notice is hereby given that, on October 22, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Semiconductor Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are National Semiconductor Corporation, Santa Clara, CA; FSI International Corporation, Allen, TX; KLA-Tencor Corporation, San Jose, CA; Lam Research Corporation, Fremont, CA; The Board of Trustees of Leland Stanford Junior University, Stanford, CA; and University of Michigan, Ann Arbor, MI. The nature and objectives of the venture are to develop technology to intelligently control the semiconductor patterning process.

The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3924 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semi/Sematech Chapter, Inc. (''Semi/Sematech'')

Notice is hereby given that, on October 7, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), SEMI/SEMATECH CHAPTER, INC. (''SEMI/SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are 3M Company, Austin, TX; Acorn Engineering & Consulting, Tucson, AZ; ADE Corporation, Westwood, MA; Advanced Energy Industries, Inc., Fort Collins, CO; Advanced Materials Instruments and Analysis, Inc., Austin, TX; Advanced Technology Materials, Inc. (ATMI), Danbury, CT; Aeroquip Corporation, Maumee, OH; AG Associates, San Jose, CA; AGI, Abbie Gregg, Inc., Tempe, AZ; Air Products and Chemicals, Allentown, PA; AMOCO Electronic Materials Venture, Naperville, IL; Applied Materials, Santa Clara, CA; Applied Process Technology, Inc., Redwood Shores, CA; Applied Science and Technology, Inc., Woburn, MA; Ashland Chemical Company, Dublin, OH; Asyst Technologies, Inc., Fremont, CA; Bio-Rad Semiconductor Systems, Mountain View, CA; Boxer Cross, Inc., Menlo Park, CA; Brewer Science, Inc., Rolla, MO; Brooks Automation, Chelmsford, MA; Brooks Instrument, Hatfield, PA; Brookside Software, Inc., San Carlos, CA; Cadence Design Systems, Inc., San Jose, CA; Calgon Carbon Corporation, Pittsburgh, PA; Cascade Separations, Inc., Houston, TX; CFD Research Corporation, Huntsville, AL; CFM Technologies, Inc., West Chester, PA; Chapman Instruments, Rochester, NY; Charles Evans & Associates, Redwood City, CA;

Coastal Instrument & Electronics, Burgaw, NC; Comdel, Inc., Gloucester, MA; Credence Systems Corporation, Fremont, CA; CTI-Cryogenics, Mansfield, MA; CVC, Inc., Rochester, NY; Cymer, Inc., San Diego, CA; Digital Instruments, Santa Barbara, CA; Dow Chemical Company, Midland, MI; Dow Corning Corporation, Auburn, MI; Dryden Engineering Company, Inc., Fremont, CA; Duke Scientific Corporation, Palo Alto, CA; Dupont Photomasks, Wilmington, DE; DYM, Inc., Bedford, MA; Dynatronix, Inc., Amery, WI; E.O.R.M., Inc., Sunnyvale, CA; Eaton Corporation, Beverly, MA; EG&G Aerospace & Engineered Products, Beltsville MD; Electroglas, Inc., Santa Clara, CA; Emcore Corporation, Somerset, NJ; ENI, Rochester, NY; ETEC Systems, Inc., Hayward, CA; Extraction Systems, Inc., Franklin, MA; Flip Chip Technologies LLC, Phoenix, AZ; Fluent, Inc., Lebanon, NH; Fortrend Engineering Corporation, Sunnyvale, CA; Fourth State Technology, Austin, TX; FSI International, Chaska, MN; Furon Company, Laguna Niguel, CA; GaSonics International, San Jose, CA; GW Associates, Inc., Sunnyvale, CA; HPG International, Inc., Somerset, NJ; HUNTAIR, Tigard, OR; Industrial Design Corporation (IDC), Portland, OR; Insync Systems, Inc., Milpitas, CA; Integrated Flow Systems, Inc., Scotts Valley, CA; Interface Systems, DE, Inc., Gladwyne, PA; Ion Systems, Berkeley, CA; IPEC, Phoenix, AZ; Keithley Instruments, Inc., Cleveland, OH; KLA-Tencor, San Jose, CA; KLA-Tencor Amray Division, Bedford, MA; Kulicke & Soffa Industries, Inc., Willow Grove, PA; Lam Research Corporation, Fremont, CA; Lambda Physik, Inc., Ft. Lauderdale, FL; Lambda Technologies, Inc., Morrisville, NC; Lucid Treatment Systems, Hollister, CA; Manugistics, Los Altos, CA; MEECO, Inc., Warrington, PA; Mentor Graphics Corporation, Wilsonville, OR; Metal Fab Corporation, Ormond Beach, FL; Micrion Corporation, Peabody, MA; Microbar, Inc., Sunnyvale, CA; MicroFab Technologies, Inc., Plano, TX; Millipore Corporation, Bedford, MA; MKS Instruments, Inc., Andover, MA; Mott Metallurgical Corporation, Farmington, CT; Nalco Chemical Company, Naperville, IL; Nanometrics Incorporated, Sunnyvale, CA; Novellus Systems, Inc., San Jose, CA; NTA Industries, Inc., Milpitas, CA; ObjectSpace, Inc., Austin, TX; Obsidian, Fremont, CA; Olin Corporation, Norwalk, CT; OPC Technology, Inc., San Jose, CA; Pacific Scientific Company, Newport Beach, CA; Pall Corporation, Glen Cove, NY; Parker Hannifin Corporation, Lebanon, IN; PCT Systems, Inc., Fremont, CA; Photronics, Inc., Brookfield, CT; Physical Electronics, Inc., Eden Prairie, MN; Praxair, Inc., Danbury, CT; Precise Sensors, Inc., Monrovia, CA; PRI Automation, Billerica, MA; Process Specialities, Tracy, CA; Progressive Technologies, Inc., Tewksbury, MA; Pyromatics, Inc., Willoughby, OH; QC Optics, Inc., Wilmington, MA; Radian International, Austin, TX; Research Electro-Optics, Inc., Boulder, CO; Reynolds Tech Fabricators, Inc., East Syracuse, NY; RF Power Products, Voorhees, NJ; RF Services, Inc., Sunnyvale, CA; Rippey Corporation, El Dorado Hills, CA; Rudolph Technologies, Flanders, NJ; SACHEM, Inc., Austin, TX; SCP Global Technologies, Boise, ID; Semifab Incorporated, Hollister, CA; Semitest, Inc., Billerica, MA; Semitool Incorporated, Kalispell, MT; SEMY Engineering, Inc., Phoenix, AZ; SensArray Corporation, Santa Clara, CA; Sensys Instruments Corporation, Sunnyvale, CA; Shipley Company, Inc., Marlborough, MA; Shuttleworth, Inc., Huntington, IN; S12 (Silicon Integration Initiative, Inc.), Austin, TX; Sievers Instruments, Boulder, CO; Silicon Valley Group, Inc., San Jose, CA; Solid State Equipment Corporation, Horsham, PA; Solid State Measurements, Inc., Pittsburgh, PA; Southwest Research Institute, San Antonio, TX; Speedfam Corporation, Des Plaines, IL; Stellar Dynamics, Boise, ID; Strasbaugh, San Luis Obispo, CA; SubMicron Systems Corporation, Allentown, PA; Superior Design, Inc., Peabody, MA; Suss Advanced Lithography, Inc., South Burlington, VT; Swagelok Marketing Co., Solon, OH; Syncro Vac, Elgin, TX; Synopsis, Mountain View, CA; Systematic Designs International, Inc., Vancouver, WA; TDIndustries—Technology Group, Dallas, TX; Tegal Corporation, Petaluma, CA; Teradyne, Inc., Boston, MA; Tescom Corporation, Elk River, MN; Therma-Wave, Inc., Fremont, CA; Thomas West, Inc., Sunnyvale, CA; TRW, McLean, VA; TSI Field Service, Inc., Albuquerque, NM; Ultrapointe Corporation, San Jose, CA; Ultratech Stepper, Inc., San Jose, CA; Unit Instruments, Inc., Yorba Linda, CA; Varian, Palo Alto, CA; Veeco Instruments, Plainview, NY; Veriflo Corporation, Richmond, CA; Verteq, Inc., Santa Ana, CA; W.L. Gore & Associates, Inc., Elkton, MD; Watkins-Johnson Company, Scotts Valley, CA; Westlake Plastics Company, Lenni, PA; Wright Williams & Kelly, Inc., Pleasanton, CA; and Zygo Advanced Imaging Systems, San Francisco, CA.

The nature and objectives of the venture are to promote the research and development of advanced semiconductor manufacturing techniques, to further the common business interests and technology growth of the U.S. Semiconductor equipment and materials industries and to facilitate collaboration throughout the semiconductor supply chain to enable SEMI/SEMATECH members to be the leading suppliers to the global semiconductor industry.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 99–3916 Filed 2–17–99; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 1, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 1, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment

and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of January, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 01/19/99]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 35,487 | Baker Atlas (Wkrs) | Williston, ND | 01/01/1999 | Oil and Gas Services |
| 35,488 | Doehler Javis (UAW) | Stowe, PA | 01/05/1999 | Bearing Cap. |
| 35,489 | D'Arbo Limited (Co.) | Monterey, TN | 01/04/1999 | Skirts. |
| 35,490 | Rock-Tenn Co (Co.) | Taylorsville, NC | 01/05/1999 | Folding Cartons. |
| 35,491 | Beullaville Garments (Wkrs) | Beullaville, NC | 01/05/1999 | Shirts. |
| 35,492 | Curtis Sportswear, Inc. (Co.) | Etowah, TN | 12/29/1998 | Jeans. |
| 35,493 | Linville Hosiery Inc. (Co.) | Marion, NC | 01/05/1999 | Socks—men's, Ladies' & Children. |
| 35,494 | Philips Lighting Co (Co.) | Lewiston, ME | 12/23/1998 | Molybdenum and Tungsten. |
| 35,495 | Intel Corporation (Wkrs) | Dupont, WA | 01/07/1999 | Components & Cases for Personal Computer. |
| 35,496 | Clevenger Industries (Co.) | Marion, NC | 01/05/1999 | Men's, Ladies' Children's Socks. |
| 35,497 | Washington Public Power (Wkrs) | Elma, WA | 12/16/1998 | Electric Power. |
| 35,498 | Patterson Drilling Co (Wkrs) | Snyder, TX | 01/04/1999 | Oil Drilling. |
| 35,499 | Kulicke and Soffa Ind. (Wkrs) | Willow Grove, PA | 01/06/1999 | Automative Wire Bonders. |
| 35,500 | Milton Bradley Wood (Wkrs) | Fairfax, VT | 01/04/1999 | Wooden Tiles for Scrabble Games. |
| 35,501 | Stitches, Inc. (Wkrs) | El Paso, TX | 01/06/1999 | Pants, Shorts. |
| 35,502 | All Technologies (Wkrs) | El Paso, TX | 01/04/1999 | Computers. |
| 35,503 | Recmix of Pennsylvania (Wkrs) | Canonsburg, PA | 01/04/1999 | Stainless Steel Slag. |
| 35,504 | Lanier Clothes (Wkrs) | Greensville, GA | 12/16/1998 | Sport Coats and Dress Pants. |
| 35,505 | Sun Studs, Inc (Co.) | Roseburg, OR | 12/16/1998 | Sofwood Veneer. |
| 35,506 | Paramount Headwear (Wkrs) | Winona, MO | 12/07/1998 | Baseball Caps. |
| 35,507 | Weatherford A.L.S. (Wkrs) | Odessa, TX | 01/06/1999 | Oil Service. |
| 35,508 | Compaq Computer Corp (Wkrs) | Colorado Spring, CO | 01/04/1999 | Software Programs. |
| 35,509 | Well Tech, Inc (Wkrs) | El Reno, OK | 12/16/1998 | Oilwell Services. |
| 35,510 | Borden Yarn Co. (Co.) | Goldsboro, NC | 12/23/1998 | Spun Yarn. |
| 35,511 | Stanley Tools (Wkrs) | Kansas City, KS | 01/06/1999 | Bronze Edgers & Groovers, Brick Trowels. |
| 35,512 | Tecos Fashions (Wkrs) | El Paso, TX | 01/05/1999 | Jean Jackets. |
| 35,513 | Hunt Oil Co (Wkrs) | Dallas, TX | 01/05/1999 | Oil and Gas Exploration & Production. |
| 35,514 | Sun Apparel of Texas (Co.) | El Paso, TX | 01/07/1999 | Jeans, Jackets, Shirts, Shorts |
| 35,515 | U.S. Foam Company (Co.) | Carlsbad, CA | 12/16/1998 | Styrofoam Molded Cushions. |
| 35,516 | Asarco, Inc (Co.) | El Paso, TX | 01/07/1999 | Cooper Anodes. |

[FR Doc. 99–3975 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–W

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

**TA–W–34,026, Bethlehem Steel Corporation, Washington Steel Division (Formerly Known as Lukens Steel Company, Stainless Steel Group), Washington, Pennsylvania**

**TA–W–34,026B, Massillon, Ohio**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 14, 1998, applicable to workers of Lukens Steel Company, Stainless Steel Group, Washington and Houston, Pennsylvania and Massillon, Ohio. The notice was published in the **Federal Register** on February 6, 1998 (63 FR 6209).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of stainless steel products. The company reports that in May, 1998 the Washington, Pennsylvania and Massillon, Ohio locations of Lukens Steel Company were purchased by Bethlehem Steel Corporation. The Department is amending the certification determination to correctly identify the new title name to read ''Bethlehem Steel Corporation, Washington Steel Division'', (formerly known as Lukens Steel Company, Stainless Steel Group), Washington, Pennsylvania and Massillon, Ohio.

The amended notice applicable to TA–W–34,026 is hereby issued as follows:

All workers of Bethlehem Steel Corporation, Washington Steel Division, (formerly known as Lukens Steel Company, Stainless Steel Group), Washington, Pennsylvania (TA–W–34,026) and Massillon, Ohio (TA–W–34,026B) who became totally or partially separated from employment on or after November 6, 1996 through January 14, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of February, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3968 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,175]**

### Electronic Components & Systems, Inc. Including Temporary Workers of National Staffing Resources, Tucson, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 20, 1998, applicable to all workers of Electronic Components & Systems, Inc., Tucson, Arizona. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some workers of Electronic Components & Systems were temporary workers of National Staffing Resources employed to produce printed circuit boards at the Tucson, Arizona facility.

Based on these findings, the Department is amending the certification to include temporary workers of National Staffing Resources, Tucson, Arizona who were engaged in the production of printed circuit boards at Electronic Components & Systems, Inc., Tucson, Arizona.

The intent of the Department's certification is to include all workers of Electronic Components & Systems, Inc. adversely affected by imports of printed circuit boards.

The amended notice applicable to TA–W–35,175 is hereby issued as follows:

All workers of Electronic Components & Systems, Inc., Tucson, Arizona and temporary workers of National Staffing Resources, Tucson, Arizona engaged in employment related to the production of printed circuit boards for Electronic Components & Systems, Inc., Tucson, Arizona who became totally or partially separated from employment on or after October 27, 1997 through November 20, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of February, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3969 Filed 2–17–99; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,563]**

### GL&V/Black Clawson-Kennedy, Watertown, New York; Notice of Negative Determination on Reconsideration

On August 25, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 4, 1998 (63 FR 47326).

The Department initially denied TAA to workers of GL&V/Black Clawson-Kennedy because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The production of dryers and dryer systems was transferred to another company-owned domestic facility. The company does not import and has no plans to start importing like or directly competitive products. The workers at the subject firm was engaged in employment related to the production of dryers and dryer systems.

The petitioner asserted that increased foreign competition was a major factor in the closing of the facility and provided additional information which warranted reconsideration of the Department's previous denial.

On reconsideration, the Department requested that the subject firm provide additional information about the sales and lost bids. The Department conducted a survey of lost domestic bids by the subject firm. The respondent indicated the manufacture of the dryers was subcontracted to a U.S. company which manufactured the dryers in the U.S.

### Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of GL&V/ Black Clawson-Kennedy, Watertown, New York.

Signed at Washington, DC this eighth day of February 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3972 Filed 2–17–99; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 1, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not lather than March 1, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 25th day of January, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted on 01/25/1999]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 35,517 | Kopfman and McGinnis, Inc (Wrks) | Hays, KS | 01/01/1999 | Crude Oil. |
| 35,518 | Power Offshore Service (Wrks) | Harvey, LA | 01/11/1999 | Marine Support Services. |
| 35,519 | Henry Glass and Co., Inc (Wrks) | New York, NY | 01/08/1999 | Textile Print Converter. |
| 35,520 | Anchor Drilling Fluids (Wrks) | Sidney, MT | 01/04/1999 | Provides Oilwell Services. |
| 35,521 | AGIP Petroleum Co (Wrks) | Houston, TX | 01/05/1999 | Oil and Gas, Petroleum Products. |
| 35,522 | Great Northern Paper (Comp) | Millinocket, ME | 01/12/1999 | Softwood Sawlogs, Pulpwood, Chips. |
| 35,523 | Greenwood Mills (UNITE) | Lindale, GA | 01/12/1999 | Denim Fabrics. |
| 35,524 | Lincoln Laser (Comp) | Pheonix, AZ | 01/12/1999 | Laser Scanning Assemblies. |
| 35,525 | Ithaca Industries, Inc (Comp) | Gastonia, NC | 01/11/1999 | Finished Cloth for Apparel. |
| 35,526 | Williston Basin Inspect. (Comp) | Williston, ND | 12/30/1998 | Oilfield Services. |
| 35,527 | Rockwell International (IAMAW) | Cedar Rapids, IA | 01/07/1999 | Printing Presses—Newspaper. |
| 35,528 | BP Exploration, Inc (Comp) | Anchorage, AK | 01/12/1999 | Oil and Gas. |
| 35,529 | Russell Engine Service (Comp) | Russell, KS | 12/29/1998 | Outfield Engine Parts. |
| 35,530 | Weinman Pump and Supply (USWA) | Pittsburgh, PA | 01/05/1999 | Hydraulic Power Units. |
| 35,531 | Weaver Services, Inc (Comp) | Snyder, TX | 01/06/1999 | Logs Geological Formation of Well. |
| 35,532 | Boeing Co (The) (Wrks) | Monrovia, CA | 01/05/1999 | Aircraft Assembly. |
| 35,533 | Manufacturing and Tech. (Wrks) | East Wilton, ME | 01/08/1999 | Electro Mechanical Assemblies. |
| 35,534 | Gesco International (Comp) | San Antonio, TX | 12/31/1999 | Catheters. |
| 35,535 | American Silicon Tech. (USWA) | Rock Island, WA | 01/06/1999 | Silicon Metal. |
| 35,536 | Fourmost Garment, Inc (Wrks) | Bristol, VA | 01/08/1999 | Apparel. |
| 35,537 | Porcelanite, Inc (Comp) | Lexington, NC | 01/13/1999 | Glazed Wall Tile. |
| 35,538 | Funk's Oilfield Service (Comp) | Kincaid, KS | 01/09/1999 | Oilfield Services. |
| 35,539 | Wendt Corp (Wrks) | Tonawanda, NY | 01/11/1999 | Scrap Metal Recycling Equipment. |
| 35,540 | Flowline (Comp) | New Castle, PA | 01/06/1999 | Stainless Steel Butt-Weld Fittings. |
| 35,541 | Boston Precision Parts (Comp) | Hyde Park, MA | 12/09/1998 | Precision Sheet Metals Parts. |
| 35,542 | Wilkins Industries, Inc (Comp) | Athens, GA | 01/15/1999 | Men's and Ladies' Jeanswear. |
| 35,543 | Sanyo Audio Manufacturing (Comp) | Milroy, PA | 01/06/1999 | Hi-Fi Stereo Speaker Systems. |
| 35,544 | Philips Services, Plt 62 (USWA) | Canton, OH | 01/07/1999 | Iron and Steel Scrap. |

[FR Doc. 99–3974 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,343]**

### Papillon Ribbon & Bow Company a/k/a/ Alpha Trims New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 19, 1999, applicable to all workers of Papillon Ribbon & Bow Company, New York, New York. The notice was published in the **Federal Register** on January 29, 1999 (64 FR 4712).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the design and manufacture of garment trimming accessories. Findings show that some workers separated from employment at Papillon Ribbon & Bow Company had their wages reported under a separate unemployment insurance (UI) tax account for Alpha Trims, New York, New York.

The intent of the Department's certification is to include all workers of Papillon Ribbon & Bow Company who were adversely affected by increased imports. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,343 is hereby issued as follows:

All workers of Papillon Ribbon & Bow Company, also known as Alpha Trims, New York, New York who became totally or partially separated from employment on or after November 30, 1997 through January 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of February, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc 99–3970 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,156D]**

### Pluma, Incorporated Rocky Mount, Virginia; Notice of Revised Determination on Reopening

On December 18, 1998, the Department issued a Negative Determination Regarding Eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Pluma, Incorporated, located in Rocky Mount, Virginia. The notice was published in the **Federal Register** on January 25, 1999 (64 FR 3720).

By letter of January 11, 1999, officials of Pluma, Incorporated submitted information regarding the closure of the subject firm plant in Rocky Mount, Virginia. Based on this new evidence, the Department reopened the petition investigation.

The initial investigation resulted in a negative determination based on the finding that the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm producing knitted activewear (fleecewear).

New findings on reopening reveal that sales, production and employment at Pluma, Incorporated, Rocky Mount, Virginia will decline to zero with the plant closure beginning April 1999. Company imports of fleecewear increased in quantity from 1997 to 1998.

**Conclusion**

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with articles produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of Pluma, Incorporated, Rocky Mount, Virginia, who became totally or partially separated from employment on or after October 15, 1997, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC this 9th day of February 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3971 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,192]**

### Rockwell Semiconductor Systems—Colorado Springs, Inc. Including Workers of Guards-Mark, Inc., Colorado Springs, CO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8, 1999, applicable to all workers of Rockwell Semiconductor Systems—Colorado Springs, Inc. located in Colorado Springs, Colorado. The notice was published in the **Federal Register** on January 29, 1999 (64 FR 4712).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some workers at Rockwell Semiconductor Systems were leased from Guards-Mark, Inc., Colorado Springs, Colorado to provide security detail at the Colorado Springs, Colorado facility. Worker separations occurred at Guards-Mark as a result of closing the Colorado Springs, Colorado location of Rockwell Semiconductor Systems. Based on these findings, the Department is amending the certification to include leased workers from Guard-Mark, Inc., Colorado Springs, Colorado.

The intent of the Department's certification is to include all workers of Rockwell Semiconductor Systems—Colorado Springs, Inc. adversely affected by imports.

The amended notice applicable to TA–W–35,192 is hereby issued as follows:

All workers of Rockwell Semiconductor Systems—Colorado Springs, Inc and leased workers of Guards-Mark, Inc., Colorado Springs, Colorado that provided security detail for Rockwell Semiconductor Systems—Colorado Springs, Inc., Colorado Springs, Colorado who became totally or partially separated from employment on or after October 28, 1997 through January 8, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of February, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3967 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; State Alien Labor Certification Activity Report

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension to the collection of information to the State Alien Labor Certification Activity Report. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before April 19, 1999.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Comments and questions regarding the collection of information on Form ETA 9037, State Alien Labor Certification Activity Report, should be directed to James Norris, Chief, Division of Foreign Labor Certifications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, D.C. 20210 ((202) 219–5263 (this is not a toll-free number)).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Alien labor certification programs administered by the Employment and Training Administration (ETA) of the Department of Labor (DOL or Department) require State Employment Security Agencies (SESAs) to initially process applications for per permanent and temporary labor certifications filed by U.S. employers on behalf of alien workers seeking to be employed in the U.S. SESAs are also responsible for issuing prevailing wage determinations, reviewing employer-provided wage surveys or other source data, conducting

housing inspections of facilities offered to migrant and seasonal workers, and conducting and monitoring recruitment activities seeking qualified U.S. workers for the jobs employers are attempting to fill with foreign workers. The SESAs perform these functions under a reimbursable grant that is awarded annually. The information pertaining to these functions is collected on the Form ETA 9037 and will be used by Departmental staff to manage alien labor certification programs in the SESAs. The Department will be able to monitor the number of applications that the State has received, processed, and forwarded to ETA Regional offices, and the number of prevailing wage determinations issued to employers under the permanent and temporary labor certification programs, as well as the H–1B program for nonimmigrant professionals in specialty occupations. The information on workload will be used for formulating budget estimates for both state and Federal workloads, and for monitoring a State's performance against the Grant Statement of Work and Work Plan. Without such information, the budget workload figures will be estimates and the allocation of funding to the SESAs will not reflect the true workload in a State.

**II. Current Actions**

In order for the Department to met its statutory responsibilities under the INA there is a need for an extension of an existing collection of information pertaining to.

*Type of Review:* Extension of a currently approved collection without change.

*Agency:* Employment and Training Administration, Labor.

*Title:* State Alien Labor Certification Activity Report.

*OMB Number:* 1205–0319.

*Affected Public:* Federal and State governments.

*Form:* Form ETA 9037.

*Total Respondents:* 54.

*Frequency of Response:* Semi-annually.

*Total Responses:* 108.

*Average Burden Hours per Response:* 2.

*Estimate Total Annual Burden Hours:* 216.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 10th day of February, 1999.

**John R. Beverly, III,**

*Director, U.S. Employment Service.*

[FR Doc. 99–3966 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Availability of Funds and Solicitation for Grant Applications in School-to-Work Opportunities; State and Local Systems

**AGENCIES:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications (SGA) providing work-based learning opportunities in State and local School-to-Work (STW) systems through two distinct efforts undertaken by either: (1) national industry/trade groups or associations/coalitions with national memberships or participation; or (2) local/regional business-led consortia.

**SUMMARY:** This notice contains all of the necessary information and forms needed to apply for grant funding. The Departments of Labor and Education jointly invite proposals for up to 10 new awards in FY 1998, as authorized under Section 403 of the School-to-Work Opportunities Act of 1994 (the Act). These awards will provide support to industry/trade groups or associations/coalitions with national memberships or participation and to local/regional business-led consortia to undertake outreach, technical assistance, and other activities to increase the number and capacity of employers to participate in STW systems. The Departments believe that a targeted approach to employer involvement in STW through industry and trade groups or associations/coalitions with national memberships/participation and through local/regional business-led consortia has the potential to help develop a critical mass of business partners. As a result of the products developed and activities carried out, awardees will be asked to provide clear, quantifiable evidence that they are significantly increasing the numbers of employers participating in STW and increasing the number of work-based learning opportunities for students who are participating in STW activities. The Departments made four awards to distinct industry groups (retail, manufacturing, information technology and utilities) in FY 1997.

**DATES:** Applications will be accepted commencing February 18, 1999. The closing date for receipt of applications is April 5, 1999, at 4 P.M., (Eastern Time ) at the address below.

**ADDRESSES:** Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Patricia A. Glover, Reference: SGA/DFA 99–005, 200 Constitution Avenue, N.W., Room S–4203, Washington, D.C. 20210.

**FOR FURTHER INFORMATION:** Questions should be faxed to Patricia A. Glover, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (DFA 99–005) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

**Industry Association/Business Consortium Solicitation**

*I. Purpose*

To invite proposals for increasing the number and capacity of employers providing work-based learning opportunities in State and local School-to-Work (STW) systems through two distinct efforts undertaken by either: (1) national industry/trade groups or associations/coalitions with national memberships or participation; or (2) local/regional business-led consortia.

*II. Background*

The School-to-Work Opportunities Act was signed into law by President Clinton on May 4, 1994. Jointly administered by the Departments of Labor and Education, this Act is a new approach to education and workforce development that seeks to better prepare all American youth for careers in high-skill, high-wage jobs and to strengthen the linkages between what is learned in school with work. Under the Act, venture capital grants are provided to States and local communities to undertake systemic reform to increase the likelihood that youth will successfully transition from school into careers or post-secondary institutions. Grants are for a limited duration with the Federal investment declining over time. These investments are intended to support the one-time costs of States and local communities to restructure learning experiences for all students. Currently all 50 states, the District of Columbia and Puerto Rico are receiving

STW implementation funds. The Act also provides funds for national activities to support STW system-building efforts nationwide. These funds are used for technical assistance and capacity building, outreach and research and evaluation. Section 403 of the Act, relating to training and technical assistance, specifically directs the Secretaries to '' work in cooperation with * * * employers and their associations * * * to increase their capacity to develop and implement effective School-to-Work programs.''

*III. Statement of Work*

*Employer Participation in STW.* Changes in our economy, technology and global competition are driving forces behind efforts to improve the academic performance and career preparedness of today's youth. One purpose, the National School-to-Work Opportunities Act was to: ''utilize workplaces as active learning environments in the educational process by making employers joint partners with educators in providing opportunities for all students to participate in high-quality, work-based learning experience.'' Work-based learning is one of the three key components within a STW system (school-based learning and connecting activities are the other two). Thus, employer participation is critical for the implementation and sustainability of STW systems.

Employers participate in STW systems through a number of activities involving students, teachers and with State and local governing bodies. The Employer Participation Model, published by the National Employer Leadership Council, outlines more than 50 different opportunities for employer involvement in STW. States and local communities are actively working to engage employers in becoming partners and active participants within their STW systems.

*Status of Employer Investments.* The National School-to-Work Office (NSTWO) has made a number of investments to support employer knowledge and participation in emerging STW systems. In FY 1996, the NSTWO funded the Building Linkages initiative to promote connections between State Academic standards and industry-recognized skill standards. The goal was to ensure that student learners meet both the requirements of post-secondary education and employer expectations. As a result, curricular models within the context of broad career areas were created. Another major investment included support for the establishment and development of the National Employer Leadership Council, the mission of which is to enlist the leadership of prominent CEO's of major companies to promote STW at the highest levels of corporate business.

The NSTWO, in addition to the industry-specific awards in FY 1997, also invested in outreach activities, specific publications targeted to business entities and employers and research and evaluation in an effort to collect data on employer participation. Such data have been collected from three sources: (1) the National Employer Survey conducted by the University of Pennsylvania's Center on Educational Quality of the Workforce; (2) the School-to-Work Progress Measures System; and (3) The Bureau of Labor Statistics' National Longitudinal Survey of Youth Data Collection.

There is preliminary information demonstrating that the investments made to date on employer participation are having an important impact, but there is a long way to go before employer participation can be considered at scale and sufficiently sustainable. The most recent evaluation of STW systems conducted by Mathematica Policy Research revealed that employers are playing an active role in local partnerships, participating widely in governing boards, offering varied forms of work-based learning opportunities, hosting teacher internships and contributing to curriculum development. However, according to several studies, there needs to be more in-depth work-based experiences provided by employers and an increase in the number of employers participating in STW to effectively augment and link to classroom instruction.

Other research, such as the National Employer Leadership Survey conducted by the Center on Educational Quality of the Workforce, suggests that employers, under the right circumstances, are more than ready and eager to participate in STW programs. However, as key stakeholders, contributors to and major beneficiaries of STW, they will require clearer linkages and more focused attention than has been occurring. It is also clear that both educators and employers need to be better connected with one another.

These reports and past experience with national employer investments suggest that stronger and more strategic employer investments will be necessary if the entire STW system can really be brought to scale and securely sustained.

Employer Investment Categories

Reaching a critical mass of employer participation and sustaining the effort will require that both private and public sector employers are equipped with the following: knowledge—enough to want to participate; research—both hard evidence and anecdotal examples, to demonstrate the conditions under which there is return on investment when they participate; access—that employer participation is easily facilitated; information—that other stakeholders are ready and knowledgeable enough to partner with employers. We also know that employers are able to influence other institutions for mutual benefit, help to infuse STW into other systems, and that investments in employer participation grow and leverage other resources. Based on lessons learned from previous investments and results of research and evaluative data-gathering, in order to bring STW to scale, the following broad areas of activities are necessary:

1. *Products and activities that enable employer participation and build a knowledge base of employers.*—This includes, but is not limited to, those activities that address barriers to participation, provide more information to employers, organize employer events, highlight effective and best practices, and generally provide outreach to the employer community.

2. *Educating other stakeholders about business need and business culture.*—Educators especially need a better grounding on how to work effectively in partnership with employers. Previous experience tells us that employer involvement becomes tenuous when employers are in a ready posture to participate but schools and others are not ready to engage them.

3. *Employers influencing institutions.*—There are multiple and complex institutional entities that necessarily interact with business in STW. Policies and practices of these institutions are often out of line with business and industry need and are often inadvertently misaligned with economic trends that affect their own effectiveness. Thus, there is a need for business influence not only on education but also other workforce development initiatives.

4. *Advocating for intermediaries.*—The process of connecting schools with employers and students with employers can be time consuming and challenging given the institutional and cultural barriers described above. One successful approach has been the use of intermediary organizations that connect the two. Demonstrating and researching the features of intermediary relationships that are particularly effective in linking schools and employers will be especially valuable to

bringing STW to scale. As one report states: ''Employers want a reliable intermediary much more than they want incentives.''

5. *Research.*—Anecdotal stories of success and effectiveness are useful, but lack wide scale replicability. Research is needed that empirically demonstrates the benefit of employer participation in STW and those variables likely to contribute to effective employer involvement and employer return on investment.

6. *Building employer capacity.*—There is a need to address industry-specific needs as well as to tie STW participation into each industry's evolving skill standards. In addition, the needs of employers operating in specific labor market areas must be addressed. There is a host of other ways in which to flexibly address employer needs as agents of STW implementation.

7. *Connectivity.*—There is a need to align employer participation in complementary, supportive and/or related initiatives, for example: the Building Linkages initiative works to develop curriculum to match the technical knowledge and skills required for career entry, progression and further education in a career area.

The Departments believe that the intensity and mix of activities that will lead to scale and sustainability of employer participation can be approached through two categories of grants as described below. The Departments also believe that it is beneficial for grantees to share lessons learned, discuss common issues and share related products. The Departments expect that successful applicants in both of the application categories will coordinate activities and share results with new and previous grantees under this competition.

## *IV. Application Process*

The Departments are reserving funds appropriated for FY 1998 under the Act for two award categories. Eligible applicants may only apply under one category. Failure to select one of the two categories may lead to disqualification. The first award category is for national industry/trade associations or national coalitions with national memberships or participation. The second category is targeted to local/regional business-led consortia. Both are expected to increase the number and capacity of employers participating in State and local STW systems and to increase the number of work-based learning opportunities for students participating in STW activities.

*Application Category One: National trade/industry groups or associations/coalitions with national memberships/participation.* Priority will be given to those applicants that can reach employers through a national membership network and that represent high-growth industries not already represented by grants awarded in FY 1997. For the first category, any industry/trade association or coalition with national membership or participation that represents a national network of industry members may submit an application for a grant award. Potential applicants, however, should note the Department's priority is to support industry groups that can demonstrate significant evidence of past or current STW participation to build upon, are in growth industries, or have high potential for providing jobs that allow for career pathways for new job entrants. High-priority industries include business/finance; transportation; health services; and communications.

*Application Category Two: Regional Business-Led Consortia that encompass regional labor markets.* Priority will be given to those applicants who demonstrate innovative participation of a variety of employers in STW and who demonstrate active regional business leadership. For the second category, any local/regional business-led consortia seeking to implement or expand partnerships that link with STW initiatives and that create new and effective approaches to increasing the number of employers participating in STW and increasing work-based learning opportunities for youth may apply. These partnerships must meet a specific business need of a local/regional labor market area as well as support educational improvement efforts. Non-profit organizations may apply in partnership with specific business entities, but must demonstrate a clear business leadership to the initiative.

In preparing the proposal for either category, please use the following headings and respond to the information in each of the following categories.

### 1. Industry and Project

Identify the industry, sponsoring association (or nonprofit organization) and title of the proposal. Provide information on the number, percentage of industry and mix (large and small) of employers represented by this proposal.

### 2. Project Proposal

Provide a detailed work plan that includes a description of the proposed activities, with accompanying dated timelines, and the target audiences for these activities. The offeror should demonstrate how the proposed work plan will contribute to bringing STW to scale and how it will lead to sustainability.

Indicators demonstrating whether the work plan is likely to help bring STW to scale include:

- Showing the impact/usefulness at the national, state, and local levels and demonstrating an ''outreach'' strategy to enhance this impact;
- Articulating how the planned activities will build linkages between the business and education communities in measurable ways, including the use of intermediary organizations;
- Connecting related curriculum development efforts funded by the National School-to-Work Office/Office of Vocational and Adult Education that link to industry-recognized skill standards, i.e. Building Linkages;
- Identifying opportunities/activities/materials for teacher professional development in the area of employer engagement;
- Identifying innovative approaches to work-based learning that can accommodate any student; and
- Identifying numerical goals around the numbers of employers who will begin to be engaged in STW and the numbers of work-based learning positions for students.

Indicators demonstrating whether the plan demonstrates sustainability after the federal investment has ended include:

- Providing a realistic plan for institutionalizing the endeavor beyond a specific project level;
- Extracting and documenting the common lessons applicable to other interested entities within a targeted industry, occupation or sector;
- Identifying both federal and non-federal funding sources that amplify the federal STW investment and outlast it;
- Describing in business terms how it is a solution to a business problem or address a business need; and
- Identifying clear roles for major stakeholder groups such as industry, educators, parents, students and employee representatives or unions when applicable.

### 3. Connecting to Related Initiatives and Entities

The offeror should demonstrate how its proposed plan of activities will build upon existing coalitions or create new coalitions that maximize business involvement and participation in STW; and/or connect with other entities with similar experiences and interests to identify related products, resources, funding and interests in order to take

advantage of activities in the larger arena of STW implementation; and/or involve the public and private sectors in ways that capitalize on, and connect to, existing infrastructures and overall workforce development systems; and/or connect to existing industry skill standards development efforts, including the work of the emerging Voluntary Partnerships funded by the National Skill Standards Board, Building Linkages consortia where applicable and relevant Federal initiatives (e.g., the Department of Transportation's Garrett Morgan effort).

4. Results

The offeror should provide specific and quantifiable outcomes that are anticipated from the proposed plan of activities. In identifying outcomes, the offeror should also explain how it will collect data, document results and use these results in ongoing working with members.

5. Capability

The offeror should demonstrate the capability of the organization and the key staff assigned to undertake the work plan and include examples of prior related efforts that demonstrate success in providing outreach and capacity building of member firms.

*V. Application Submittal*

Applicants must submit four (4) copies of their proposal, with original signatures. The applications shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, ''Application for Federal Assistance,'' (Appendix A) and ''Budget Information Sheet,'' (Appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the (SF) 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan, The Catalog of Federal Domestic Assistance number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on one side only. This includes any attachments. Applications that fail to meet the page limitation requirement will not be considered.

*VI. Late Applications*

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e. g. , an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addresses not later than 5:00 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and federal holidays. The term ''post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

*VII. Hand Delivered Proposals*

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, Hand-delivered applications must be received by 4:00 P.M., (Eastern Time), on the closing date at the specified address. Telegraphed and/faxed applications will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

*VIII. Funding Availability and Period of Performance*

The Departments expect to make up to 10 awards with a maximum total investment for these projects of $4.5 million. The period of performance will be for 24 months from the date the grant is awarded. The Departments may, at their option, provide additional funds for another 12 months at a lower level of funding, depending upon fund availability and performance of the offeror.

*Estimated Range of Awards.* The Departments expect the total award amounts for application category one: industry focus; to not exceed one million dollars for the total 24-month period. The Departments further expect the total award amount for application category two: business-led consortia; to range from a minimum award of $200,000 to a maximum award of $500,000, for the total 24-month period. These estimates are provided to assist applicants in developing their plans.

*IX. Review Process*

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government. Applicants may apply for only one of the two categories of grants; that is, either specific national industry initiatives or local/regional business-led consortia.

*The criteria used to rate all proposals submitted in Category One, National Industry Focus, are:*

1. The extent to which the organization represents a critical mass of employers within a growth industry. (20 points)

- Is this the lead organization for the industry?
- Is this a growth industry?
- Is this an industry in which there is already significant participation in work place experiences for teachers and/or students?
- Does the industry offer jobs that provide pathways to high wage careers?
- Is the industry and/or lead organization currently involved in the development and use of skill standards within education and training systems?

2. The extent to which the proposed plan will leverage the infrastructure of a national industry or trade association in order to reach a critical mass of employers who will participate in and benefit from STW. (35 points)

- Is the plan specific as to the activities proposed and how these activities will result in broad employer participation?
- Does the proposal clearly demonstrate how the activities proposed will bring employer participation in STW systems to scale?
- Does the plan clearly demonstrate how the organization plans to build

upon existing venues for reaching member firms?

• Does the plan have clear numerical goals for new employers and work-based learning positions for students?

• Are the outcomes proposed specific, realistic and measurable?

3. The extent to which the proposal addresses the system-building elements of STW. (35 points)

• Is it clear how other critical stakeholders will be involved at the State and local level?

• Does the proposal address how the activities will connect with State and local STW system initiatives?

• Does the proposal include how this project will relate to other industry associations and business coalitions?

• Does the proposal address the activities that connect employers with schools at the local level and how these activities will be accomplished?

• Does the proposal address how the activities will connect and leverage other national initiatives that promote industry involvement in the development and use of skill standards, e.g. Building Linkages?

• Does the proposal address how employees or their representatives, including unions, will be involved in the development and implementation of STW in the affected industry?

4. The extent to which the proposed plan is likely to produce sustainable employer engagement in STW after the federal investment has ended. (10 points)

• Is there evidence of non-grant funding that amplifies the federal investment and that is likely to contribute to sustaining the project's impact?

• Is the proposal specific as to the business needs and problems that the proposed activities are designed to address?

*The criteria used to rate all proposals in Category Two, Business-Led Consortia, are:*

1. The extent to which the applicant and its partners represent a business-led initiative that addresses a particular local/regional labor market need. (20 points)

• Is there clear evidence that the consortium is business led?

• Does the project reflect significant participation in work-based experiences for teachers and/or students?

• Do the consortia members offer jobs that provide pathways to high-wage careers?

• Does the application show the connection between its activities and the labor market needs of the area?

2. The extent to which the proposed plan will reach a critical mass of employers who will participate in and benefit from STW. (35 points)

• Is the plan specific as to the activities proposed, how these activities will result in broad employer participation, and what personnel will be assigned to key tasks?

• Does the proposal clearly demonstrate how the activities proposed will bring employer participation in local STW systems to scale?

• Does the plan clearly demonstrate how the consortium plans to build upon existing partnerships for reaching employers?

• Does the plan have clear numerical goals for increasing the number of employers who will begin to be engaged in STW and for increasing the number of work-based learning positions for students?

• Are the outcomes proposed specific, realistic and measurable?

3. The extent to which the proposal addresses the system-building elements of STW. (35 points)

• Is it clear how other critical stakeholders will be involved?

• Does the proposal explain the specific mechanisms for engaging these stakeholders?

• Does the proposal address how the activities will connect with local STW initiatives?

• Does the proposal address the activities that connect employers with schools at the local level and how these activities will be accomplished?

• Does the proposal address how employees or their representatives, including unions, will be involved in the development and implementation of STW in the affected consortium?

4. The extent to which the proposed plan is likely to produce sustainable employer engagement in STW after the federal investment has ended. (10 points)

• Is there evidence of non-grant funding that amplifies the federal investment and that is likely to contribute to sustaining the project's impact?

• Is the proposal specific as to the business needs and problems that the proposed activities are designed to address?

• Does the application clearly show how the project activities can be replicated in other locales and how the grantee will disseminate its findings from the project?

The grants will be awarded based on applicant response to the above mentioned criteria and what is otherwise most advantageous to the Departments.

*X. Reporting Requirements*

The Departments are interested in insuring that grantees share lessons learned and products developed. To facilitate exchange of information, the Departments expect to occasionally convene grantees for meetings of approximately one-day duration. Grantees will also be asked to submit periodic progress reports in a format to be determined and on a semi-annual basis.

Signed in Washington, DC, this 12th day of February, 1999.

**Laura A. Cesario,**

*Grant Officer.*

Appendix A: (SF) 424—Application Form

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

# APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction | | 2. DATE SUBMITTED | Applicant Identifier |
| | | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, State and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code): |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐-☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT: (enter appropriate letter in box)** ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

1 7 - 2 4 9

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):**

| 13. PROPOSED PROJECT: | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |
| **d. Signature of Authorized Representative** | | **e. Date Signed** |
| | | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable) |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided.<br>- "New" means a new assistance award.<br>- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities. |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

APPENDIX B

## *PART II - BUDGET INFORMATION*

*SECTION A - Budget Summary by Categories*

| | (A) | (B) | © |
|---|---|---|---|
| *1. Personnel* | | | |
| *2. Fringe Benefits (Rate )* | | | |
| *3. Travel* | | | |
| *4. Equipment* | | | |
| *5. Supplies* | | | |
| *6. Contractual* | | | |
| *7. Other* | | | |
| *8. Total, Direct Cost (Lines 1 through 7)* | | | |
| *9. Indirect Cost (Rate %)* | | | |
| *10. Training Cost/Stipends* | | | |
| *11. TOTAL Funds Requested (Lines 8 through 10)* | | | |

*SECTION B - Cost Sharing/ Match Summary (if appropriate)*

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Cash Contribution* | | | |
| *2. In-Kind Contribution* | | | |
| *3. TOTAL Cost Sharing / Match (Rate %)* | | | |

*NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

## INSTRUCTIONS FOR PART II - BUDGET INFORMATION

### SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.

5. Supplies: Include the cost of consumable supplies and materials to be used during the project period.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Costs: Add lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. Training /Stipend Cost: (If allowable)

11. Total Federal funds Requested: Show total of lines 8 through 10.

### SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–4006 Filed 2–17–99; 8:45 am]
BILLING CODE 4510–30–C

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–02706]**

### Electronic Components & Systems, Inc., Including Temporary Workers of National Staffing Resources, Tucson, Arizona; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 20, 1998, applicable to all workers of Electronic Components & Systems, Inc., Tucson, Arizona. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69313).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some workers of Electronic Components & Systems, Inc. were temporary workers of National Staffing Resources employed to produce printed circuit boards at the Tucson, Arizona facility.

Based on these findings, the Department is amending the certification to include temporary workers from National Staffing Resources, Inc., Tucson, Arizona who were engaged in the production of printed circuit boards at Electronic Components & Systems, Inc., Tucson, Arizona.

The intent of the Department's certification is to include all workers of Electronic Components & Systems, Inc. adversely affected by the shift of production to Mexico. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to NAFTA–02706 is hereby issued as follows:

All workers of Electronic Components & Systems, Inc., Tucson, Arizona and temporary workers of National Staffing Resources, Tucson, Arizona engaged in employment related to the production of printed circuit boards for Electronic Components & Systems, Inc., Tucson, Arizona who became totally or partially separated from employment on or after October 27, 1997 through November 20, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of February, 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–3973 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Alex Energy Company**

[Docket No. M–98–116–C]

Alex Energy Company, P.O. Box 150, Leivasy, West Virginia 26676 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Flying Eagle Mine (I.D. No. 46–08576) located in Nicholas County, West Virginia. The petitioner proposes to mine through gas wells using the specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**2. Independence Coal Company, Inc.**

[Docket No. M–98–117–C]

Independence Coal Company, Inc., HC 78, Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Allegiance Mine (I.D. No. 46–08735) located in Boone County, West Virginia. The petitioner proposes to use 2,400 volt cables to power its new model continuous mining machines using specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

**3. Parcoal, Inc.**

[Docket No. M–98–118–C]

Parcoal, Inc., P.O. Box 218, Isom, Kentucky 41824 has filed a petition to modify the application of 30 CFR 75.364(a) (weekly examination) to its Mine No. 1 (I.D. No. 15–17963) located in Perry County, Kentucky. Due to hazardous roof conditions in certain areas of the return air course, the affected area is unsafe to travel. The petitioner proposes to establish check points at two locations outside the unsafe area to check the air quantity and quality on a daily basis and record the results as a part of the pre-shift inspection. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 22, 1999. Copies of these petitions are available for inspection at that address.

Dated: February 5, 1999.

**Carol J. Jones,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 99–3908 Filed 2–17–99; 8:45 am]

BILLING CODE 4510–43–P

## LEGAL SERVICES CORPORATION

### Public Hearing; Comment Request

**AGENCY:** Legal Services Corporation.

**ACTION:** Request for comments and notice of public hearings of Commission authorized by the Legal Services Corporation to study the issue of when aliens must be present in the United States to be eligible for legal assistance from Corporation-funded programs.

**SUMMARY:** The Legal Services Corporation (''LSC'' or ''Corporation'') has formed and authorized a Commission to hold public hearings and study the meaning of a statutory requirement in the Corporation's appropriations act that an alien be present in the United States in order to be eligible for legal assistance from LSC-funded programs (hereinafter referred to as ''the presence requirement''). This notice provides preliminary information on the public hearings that will be held by the Commission and also requests written comments on the presence requirement. In addition to written comments, requests from interested parties to provide oral testimony at the hearings will be accepted. The public hearings and comments are intended to aid the Commission compile a factual record and prepare findings to be transmitted to the Corporation's Board

of Directors, along with recommendations, to inform the Corporation's interpretation of the presence requirement and to provide the basis for any remedial action, such as a rulemaking or a request for legislative action by the Congress.

**DATES:** Comments and requests to provide oral testimony should be received by the Corporation on or before March 22, 1999.

**ADDRESSES:** Comments and requests should be submitted to the Office of the General Counsel, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250.

**FOR FURTHER INFORMATION CONTACT:** Suzanne B. Glasow, Office of the General Counsel, 202–336–8817.

**SUPPLEMENTARY INFORMATION:** The Corporation's appropriations act prohibits LSC-funded recipients from providing legal assistance to an alien unless the alien is present in the United States and falls into certain delineated categories. See Section 504(a)(11) of Pub. L. 104–134, incorporated by reference in Pub. L. 105–277. Although there is general agreement that present in the United States means to be physically in the United States, it is not clear when an alien must be present. One interpretation of the language would require an alien to be physically present in the United States any time the alien is provided legal assistance from an LSC recipient. Another is that the alien must be physically present only when legal representation is commenced. A third is that the alien must be physically present only when the cause of action for which the recipient provides legal assistance occurs.

Although the presence requirement applies to all categories of aliens listed in the Corporation's appropriations act, the aliens most affected are the seasonal agricultural workers, which would include H–2A workers, Special Agricultural Workers (SAWS), and permanent resident aliens who perform seasonal agricultural work. For example, H–2A workers, as a rule, are not in the United States long enough for the resolution of many of their legal matters, making effective representation for this class of aliens questionable. Similarly, it is not uncommon for permanent resident aliens who are farm workers to temporarily leave the United States at the end of the agricultural season while their legal matters are still pending.

On November 16, 1998, the Corporation's Board of Directors (''Board'') voted to confer on the Board Chairman the authority to establish a special panel to study the issue and make a report to the Board with recommendations to inform the Corporation's interpretation of the presence requirement. See LSC Board Resolution 98–011. Subsequently, a Commission was established and the Commission held an organizational meeting at the Corporation on February 2, 1999. Members of the Commission are John N. Erlenborn, Chairman (member of the LSC Board); Professor T. Alexander Aleinikoff, Georgetown University Law Center; Gilbert F. Casellas, Esquire, The Swarthmore Group; Professor Sarah H. Cleveland, University of Texas School of Law; Professor Nancy H. Rogers, Ohio State University College of Law (member of the LSC Board). Serving as the reporter for the Commission is Professor Enid Trucios-Haynes, Louis D. Brandeis School of Law, University of Louisville.

**Public Comment**

The Commission seeks public comment on the facts and circumstances surrounding the representation of aliens who are affected by the presence requirement, with a particular emphasis on seasonal agricultural workers. Comments are specifically requested on the following questions. How long are seasonal agricultural workers typically in the United States? When does the seasonal agricultural worker normally seek legal representation? What are the common claims of seasonal agricultural workers seeking legal representation? When do the claims of seasonal agricultural workers generally ripen? How long does it typically take to resolve a seasonal agricultural worker's legal claims? What is the established practice of LSC recipients in representing seasonal agricultural aliens? What is the likelihood that private counsel is available to represent aliens who are in the United States under temporary visas or who may temporarily leave the United States? Under what circumstances do seasonal agricultural workers commonly leave the United States? What are the implications of the presence requirement on recipient attorneys' professional obligations to their clients?

**Oral testimony**

Oral testimony at the public hearings will be at the invitation of the Commission. Any person interested in providing oral testimony may submit a written request to do so in the written public comments or in a separate correspondence.

**Public Hearings**

Two public hearings will be held by the Commission. The two hearings are scheduled for March 27, 1999, and April 10, 1999. Additional information on the hearings will be noticed in the **Federal Register**.

Dated: February 12, 1999.

**Victor M. Fortuno,**

*General Counsel.*

[FR Doc. 99–3981 Filed 2–17–99; 8:45 am]

BILLING CODE 7050–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Cost Accounting Standards Board; Notice

**AGENCY:** Cost Accounting Standards Board, Officer of Federal Procurement Policy, OMB.

**ACTION:** None.

**SUMMARY:** The Cost Accounting Standards Board (CASB) hereby extends an invitation for interested parties to provide comments on the following letter sent to organizations that responded to the Staff Discussion Paper (61 FR 49533, 9/20/96) on the treatment of the costs under government contracts for post-retirement benefit (PRB) plans. While a consensus emerged on many of the issues, the topics relating to the validity (compellability) of the post-retirement benefit obligation as a prerequisite for use of accrual accounting and the need, if any, to substantiate accruals by funding, engendered forceful, diverse, and often irreconcilable arguments. To promote a fuller dialogue and understanding of the issues before the Board, the Board is asking individuals to consider and comment on the opposing viewpoints discussed in the letter and to possibly expand on their own comments, if any.

**DATES:** Comments must be in writing, including an electronic copy of your comments in WordPerfect 6.1 or ASCII format, and must be received by March 15, 1999.

**ADDRESSES:** Comments should be addressed to the Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, D.C. 20503. Attn: CASB Docket No. 96–02.

**FOR FURTHER INFORMATION CONTACT:** Rein Abel, Director of Research, Cost

Accounting Standards Board (telephone: 202–395–3254).

**Richard C. Loeb,**

*Executive Secretary; Cost Accounting Standards Board.*

**Executive Office of the President, Office of Management and Budget, Washington, D.C. 20503**

January 12, 1999.

## Cost Accounting Standards Board

**SUBJECT:** Costs of Post-Retirement Benefit Plans, CASB Docket No. 96–02.

To Members of the Government contracting community:

Your organization responded to the Staff Discussion Paper (61 *Fed. Reg.* 49533; 9/20/96) of the treatment of the costs under government contracts for post-retirement benefit (PRB) plans. While a consensus emerged on many of the issues, the topics relating to the validity (compellability) of the post-retirement benefit obligation as a prerequisite for accrual accounting (Topic C) and the need, if any, to substantiate accruals by funding (Topic G) engendered forceful, diverse, and often irreconcilable arguments. To promote a fuller dialogue and understanding of the issues before the Board, is asking you to consider and comment on the opposing viewpoints discussed in this letter and to possibly expand on your own comments. The Board intends to widely distribute this letter and to invite other interested parties to also provide comments on these topics.

The Board is considering the adoption of Financial Accounting Standards Board Statement 106 (SFAS 106), ''Employer's Accounting for Postretirement Benefits Other Than Pensions,'' as the basis for the measurement of post-retirement benefit costs and assignment of those costs to cost accounting periods. Under SFAS 106, it is the ''substantive plan'' that creates a liability warranting its recognition for financial statement purposes. However, corporations often downplay the firmness of this liability in the footnotes to their financial statements. For instance, General Motors (GM) repetitively included reservations about the nature of these liabilities in its Financial Statements, e.g., Note 5 of GM's 1993 Financial Statement stated:

> The Corporation has disclosed in the financial statements certain amounts associated with estimated future post retirement benefits other than pensions and characterized such amounts as 'accumulated post retirement benefit obligations', 'liabilities', or 'obligations.' Notwithstanding the recording of such amounts and the use of these terms, the Corporation does not admit or otherwise acknowledge that such amounts or existing post retirement benefit plans of the Corporation (other than pensions) represent legally enforceable liabilities of the Corporation.

The perception, particularly among Government commenters, the any PRB liability recognized in the financial statements might be a ''soft'' liability has led to proposals that funding should be used as a tool in validating these liabilities.

### Requiring Funding To Substantiate the Post-Retirement Benefit Cost Accrual

In Standards previously promulgated by the CAS Board dealing with pension and insurance costs, the applicable Standards required that pension and retiree insurance costs be funded. Therefore, it could be argued that to maintain consistency with the promulgations of the original CAS Board and amendments promulgated by the current Board, the Board will have to consider funding as a prerequisite for the use of accrual accounting for the costs of post-retirement benefit costs.

Industry representatives have pointed out the difference between the basis for the funding requirements in the pension Standards and the basis for a potential funding requirement under the post-retirement benefits case. The Aerospace Industries Association made the point as follows:

> Public policy, as articulated in the tax code, has long encouraged pension plan sponsors to fund their programs at an adequate level. While industry does not agree that funding has any place in the Cost Accounting Standards, the addition of a funding requirement in the recent changes to CAS 412, as well as explicit recognition of tax deductible limits, did not create tension between public policies as expressed in the Internal Revenue Code and the Cost Accounting Standards.
>
> In contrast, however, Congress has intentionally discouraged prefunding of post-retirement medical benefits. It would be inconsistent for the Cost Accounting Standards Board to in essence force contractors to fund these post-retirement benefit costs.

In general, industry commenters argued against any funding requirement. The following comments made by General Electric capture the essence of the industry arguments:

> The CASB and staff need to recognize that funding, per se, does not prove or disprove the validity of the PRB liability. The Staff Discussion Paper appears to have a bias toward funding. Although funding may be an important business consideration, the Board needs to first address the appropriate accounting method absent the ''funding'' issue. There are many reasons for funding or not funding a PRB liability but these reasons generally deal with cash flow consequences and income tax considerations. The Board needs to focus on the proper method of measuring, assigning and allocating PRB costs based on the existence of the liability rather than on the existence of funding. Funding is an allowability issue which is already addressed in FAR 31.205–6(o).

Boeing also expressed the belief that funding does not necessarily substantiate the liability, but suggested that more restrictive measures of the accrual or cash accounting be used where the contractual rights to a benefit are lacking. Boeing commented that:

> The Government's concern is that accrual accounting will result in reimbursing a contractor for costs the contractor has not expended. This concern should not structure proper accounting. The accounting must be based upon the likelihood that the contractor will liquidate the liability. If the likelihood is in some doubt or remote then the costs should be recognized on more limited accrual basis, i.e., terminal funding or those vested, or if not appropriate on a cash basis. Otherwise the costs must be recognized on an accrual basis over the period of time the benefit is earned.

The American Bar Association (ABA) noted, for financial accounting purposes, the threshold for recognition is met by a probability that an obligation exists. But rather than suggesting the use of more restrictive accounting or actuarial methods, the American Bar Association (ABA) indicated there are situations when the funding of the annual accrual can serve a legitimate purpose. The ABA wrote:

> * * * Certainly, the FASB considered this issue and determined that some estimate of future expenditures was preferable to no estimate at all.
>
> * * * * *
>
> Require funding of PRB costs only if payment cannot be compelled, or if research discloses a significant incidence of contractors, defaulting on PRB obligations. The Discussion Paper asks whether funding should be required to ''substantiate'' accrued PRB costs. We believe that a valid accrual does not need to be ''substantiated'' through funding for accounting purposes. This principle applies to pension costs as well as to PRBs. Funding requirements are, at bottom, a matter of procurement policy and not a cost accounting.
>
> We do, however, agree that contractors should not be permitted to accrue costs without funding them in cases where the payment cannot be compelled. In such cases, no valid liability has been incurred unless the liability is funded. Additionally, if circumstances indicate that a contractor is likely to default on its PRB obligations, accrual without funding should not be allowed.

The National Defense Industrial Association also acknowledged that funding could be one means to

substantiate (validate) the obligation when it commented.

If it can be determined that there is a valid obligation to pay, determining an annual estimate of the cost of that liability is feasible. Once an obligation to pay is established, there are two limitations the CASB needs to establish. The first is delineating the methods for arriving at a reasonable estimate of the cost of the liability. The second task is to provide for subsequent period adjustments as circumstances change. It is clear that funding validates a liability. It is also clear that funding does not match cost with products. It is also clear that the use of funding (or any other cash payment) as a determinant of cost incurrence decreases uniformity and consistency in accounting.

On the other hand, the comments from the Office of the Under Secretary of Defense for Acquisition and Technology (OUSD) articulate the concern of some members of the Government procurement community that any potential risk that the liability may not be liquidated is unacceptable. The OUSD unequivocally stated:

Yes, funding is necessary to substantiate accrual of costs. The level of funding necessary is 100 percent of the maximum amount of possible funding in accordance with the contractor's funding vehicle. Permitting funding at less than 100 percent of the cost accrual results in a potential risk that the liabilities for which the Government has paid its fair share might never be liquidated. A 100 percent funding requirement assures the Government that the money will be available when the liability must be paid. If there are valid reasons to accrue the liabilities, the accruals should be fully funded. Permitting less than 100 percent funding effectively results in the Government providing a long-term interest free loan to contractors. Permitting funding at less than 100 percent of the cost accrual would require that earnings on the unfunded amounts be imputed each year to preclude increased costs to the Government resulting from lost earnings on the unfunded amounts.

CAS Board Concerns Currently Under Consideration:

The CAS Board's concern is that SFAS 106 recognition of the obligation for the ''substantive plan'' is inappropriate for Government contract cost accounting. In fact, the Board is concerned that the mere existence of a written description of the plan does not ensure that there is a contractual and enforceable, that is, compellable, obligation to pay the promised benefit.

The Board is particularly concerned about he eventual settlement of (i.e., disbursement for) the liability accrued for post-retirement benefit costs. Under SFAS 106, there is an intentional and notable lack of this concern in that there is no control over (i) an entity's having accrued post-retirement benefit costs for any number of years under its extant substantive post-retirement benefit plan, (ii) then subsequently abrogating the plan in whole or in part, and (iii) recognizing a ''gain'' on the reversal of the prior accruals. Indeed, pre- and post- SFAS 106, there have been instances of companies taking just such actions. Comparing the case of post-retirement benefit costs to that of pensions this respect is even more instructive in that pensions have funding (and vesting) requirements imposed by other authorities (e.g., the Internal Revenue Code, the Employee Retirement Income Security Act) which bolster the notion that the cost accrued for pensions will lead to an actual disbursement in the future. Despite this collateral support for pension accrual, the Board included a funding requirement in its rules for both qualified and nonqualified pension plans. As it deliberates on the issue of post-retirement benefit costs, a natural extension of its funding requirement for pension costs would be to incorporate a similar requirement for post-retirement benefit costs.

Request for Additional Comments and Rationale

To ensure all facts of this issue are fully considered from all perspectives, the Board would like interested parties that oppose or question the establishment of a funding requirement to suggest alternatives to funding which would provide similar or equivalent support for the compellability of the post-retirement benefit obligation as that which is provided by a funding requirement. In addition, if you believe that accrual of post-retirement benefit costs solely in accordance with SFAS 106 criteria, without any further validation of the ensuing liability, is an adequate method for recognizing PRD costs for contract costing purposes, then the Board request that you provide arguments for accepting the ''substantive plan'' as the basis for contract cost measurement.

Conversely, for those that believe that there is no realistic alternative to a funding requirement, the Board asks that you set forth the arguments in favor of funding.

Submission of Comments

Comments regarding this request should be addressed to the Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, N.W., Room 9001, Washington, D.C. 20503, Attn: CASB Docket No. 96–02. It is requested that your comments be provided no later than March 15, 1999 in order to receive full consideration. Please include an electronic copy of your comments in Word Perfect 6.1 or ASCII format.

For further information, please contact Rein Abel, Director of Research, Cost Accounting Standards Board (telephone: 202–395–3254).

Sincerely,

Richard C. Lomb,

*Executive Secretary.*

[FR Dos. 99–3955 Filed 2–17–99; 8:45 am]

BILLING CODE 3110–01–M

## NATIONAL COUNCIL ON DISABILITY

### Advisory Committee Conference Call

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice sets forth the schedule of the forthcoming conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10 (a)(1)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

**INTERNATIONAL WATCH:** The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's International Committee on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans With Disabilities Act.

**DATES:** March 17, 1999, 12:00 noon–1:00 p.m. est.

**FOR INTERNATIONAL WATCH INFORMATION, CONTACT:** Lois T. Keck, Ph.D., Research Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax), lkeck@ncd.gov (e-mail).

**AGENCY MISSION:** The National Council on Disability is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

**OPEN CONFERENCE CALLS:** These advisory committee conference calls of the National Council on Disability will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference calls at the NCD office. Those interested in joining these conference calls should contact the appropriate staff member listed above.

Records will be kept of all International Watch conference calls and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on February 9, 1999.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 99–3926 Filed 2–17–99; 8:45 am]

**BILLING CODE 6820–MA–M**

## NATIONAL LABOR RELATIONS BOARD

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** National Labor Relations Board.

**TIME AND DATE:** 10 a.m., Tuesday February 9, 1999.

**PLACE:** Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action * * *).

**MATTERS TO BE CONSIDERED:** Personnel.

**CONTACT PERSON FOR MORE INFORMATION:** John J. Toner, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1940.

Dated: Washington, DC, February 10, 1999.

By direction of the Board:

**John J. Toner,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 99–4123 Filed 2–16–99; 8:45 am]

**BILLING CODE 7545–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Establish an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

**DATES:** Written comments on this notice must be received by April 19, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125×2017; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Impact of the International Institute for Applied Systems Analysis Programs on Scientific Knowledge, Career Development of US Scientists, and US Institutional Capabilities for Research and Policy Development.

*OMB Number:* 3145–NEW.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to carry out a new information collection for one year.

*Abstract:* ''Outcomes and Impacts of Research Programs of the International Institute for Applied Systems Analysis (IIASA)''

*Proposed Project:* The International Institute for Applied Systems Analysis (IIASA) in Laxenburg, Austria, is a non-governmental, multilateral research institution created in 1972. IIASA's most recent 10-year strategic plan, adopted in 1992, focuses on research in three thematic areas: (1) Global Environmental Change; (2) Global Economic and Technological Transitions; and (3) Systems Methods for the Analysis of Global Issues. Its core research programs are funded by annual contributions from member countries. Since 1989 the US contribution has been funded by a series of grants from the National Science Foundation's Division of International Programs (NSF/INT). NSF is seeking to identify (1) the impacts of IIASA's research programs on scientific knowledge and on the education and careers of US scientists, and (2) the impacts of the information and options resulting from IIASA's research on public and private policy-related institutions in the United States.

To achieve these objectives, data will be collected from senior US scientists who have conducted research at IIASA since the current strategic plan went into effect in 1992, and from US scientists who have been participants in IIASA's Young Summer Scientists Program from 1992 through the time the data is collected. Respondents will be asked to respond to questions relevant to such factors as: (1) the impacts of their experience at IIASA on their future scientific work and career development; the impacts of IIASA's research on conceptual developments in their disciplines; and the impacts of the results of IIASA's research on US institutional capabilities for research and policy analysis.

*Use of the Information:* The information will be used by NSF to assess the extent to which the results of research that has been supported at IIASA involving US researchers are consistent with the specific outcome goals defined in the context of the NSF Strategic Plan approved by OMB and the Congress, as required by the General Performance and Results Act (GPRA) of 1993. Among NSF's five approved outcome goals, the three that are most relevant to its investments in research at IIASA are: promoting discoveries at and across the frontier of science and engineering; facilitating connections between discoveries and their use in service to society; developing a diverse, globally oriented workforce of scientists and engineers.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 60 minutes per response.

*Respondents:* Individuals.

*Estimated Number of Responses per Form:* 120.

*Estimated Total Annual Burden on Respondents:* 120 hours, broken down by 120 respondents at 1 hour per response.

*Frequency of Responses:* One time.

**Comments**

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use

of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 12, 1999.

**Suzanne H. Plimpton,**

*Reports Clearance Officer.*

[FR Doc. 99–3965 Filed 2–17–99; 8:45 am]

BILLING CODE 7555–01–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On January 7, 1999, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on February 8, 1999 to the following applicants:

Rennie S. Holt—Permit No. 99–010, Modification #1

Rae Natalie Prosser Goodall—Permit No. 99–020

**Polly Penhale,**

*Program Manager.*

[FR Doc. 99–3884 Filed 2–17–99; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–313]**

### Entergy Operations Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its April 29, 1996, application for proposed amendment to Facility Operating License No. DPR–51 for Arkansas Nuclear One, Unit No. 1, located in Pope County, Arkansas.

The proposed amendment would have revised the minimum conditions for criticality associated with pressurizer water level. The amendment would have also revised various Technical Specification Bases sections, including revising the acceptable as-found tolerance value for the pressurizer safety valves pressure setting and changing the value for flowrate through the pressurizer safety valves.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 14, 1996 (61 FR 42279). However, by letter dated January 29, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 29, 1996, and the licensee's letter dated January 29, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 9th day of February 1999.

For the Nuclear Regulatory Commission,

**Nicholas D. Hilton,**

*Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–3948 Filed 2–17–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–458, 50–440]**

### License No. NPF–47, Entergy Operations, Inc. and License No. NPF–58, FirstEnergy Nuclear Operating Company; Notice of Informal 10 CFR 2.206 Public Hearing

In a **Federal Register** notice published on January 21, 1999 (64 FR 3320), the U. S. Nuclear Regulatory Commission (NRC) announced that it will hold an informal public hearing regarding two petitions submitted pursuant to 10 CFR 2.206 involving the River Bend Station (RBS), operated by Entergy Operations, Incorporated, (the RBS licensee), and Perry Nuclear Power Plant (PNPP), Unit 1, operated by FirstEnergy Nuclear Operating Company (the PNPP licensee). The hearing will be held on February 22, 1999. The location for the hearing will be at the NRC, room T–2B3. The NRC is located at 11545 Rockville Pike, Rockville, Maryland. The hearing will be open to public attendance and will be transcribed.

In order to assist members of the public who live in the vicinity of the River Bend and Perry facilities participate in the informal public hearing being conducted in the Washington, D. C. area, the NRC will provide video teleconferencing (VTC) services at the following facilities located in Baton Rouge, Louisiana, Cleveland, Ohio, and Painesville, Ohio:

Center For Instructional Telecommunications, Coates Hall, Room 202, Louisiana State University, Baton Rouge, Louisiana 70803

The Forum Conference and Education Center, Inc., One Cleveland Center Office Building, 1375 East 9th Street, Cleveland, Ohio 44114

and,

Arthur S. Holden Center, Distance Learning Facility, Room 302, Lake Erie College, 391 West Washington Street, Painesville, Ohio 44077

The video teleconferencing facilities in all three cities will be made available to the public at 12:30 p.m. EST (11:30 a.m. CST). In order to avoid a conflict with a previously-scheduled class, members of the public participating in the informal public hearing at the LSU/Baton Rouge site will need to vacate the VTC classroom at 3:45 p.m. local time (CST). Similarly, members of the public attending the informal public hearing at the Lake Erie College facility will need to vacate the VTC classroom by 5:30 p.m. local time. The NRC will make every attempt to ensure that members of the public at the Baton Rouge and Lake Erie College sites who wish to make a statement will have the opportunity to provide their comments prior to loss of the video connection. The NRC will adjust the meeting structure outlined below, as required, to allow for public comment.

The structure of the hearing shall be as follows:

Monday, February 22, 1999:

1:00 p.m.—NRC opening remarks
1:15 p.m.—Petitioner's presentation
2:00 p.m.—NRC questions
2:15 p.m.—RBS licensee's presentation
2:45 p.m.—NRC questions
3:00 p.m.—PNPP licensee's presentation
3:30 p.m.—NRC questions
3:45 p.m.—Public comments
—Baton Rouge, Louisiana VTC site
—Painesville, Ohio site
—Cleveland, Ohio VTC site
—NRC Headquarters

4:30 p.m.—Licensees/Petitioner's final statements
4:45 p.m.—Meeting concludes

**Note:** All times are Eastern Standard Time (EST).

By letter dated September 25, 1998, the Union of Concerned Scientists (UCS or Petitioner) submitted a Petition pursuant to 10 CFR 2.206 requesting that the River Bend Station be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested that a public hearing be held to discuss this matter in the Washington, D.C. area.

By letter dated November 9, 1998, the UCS also submitted a Petition pursuant to 10 CFR 2.206 requesting that the Perry Nuclear Power Plant be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested a public hearing in the Washington, D.C. area.

The purpose of this informal public hearing is to obtain additional information from the Petitioner, the licensees, and the public for NRC staff use in evaluating the Petitions. Therefore, this informal public hearing will be limited to information relevant to issues raised in the two Petitions. The staff will not offer any preliminary views on its evaluation of the Petitions. The informal public hearing will be chaired by a senior NRC official who will limit presentations to the above subject.

The format of the informal public hearing will be as follows: opening remarks by the NRC regarding the general 10 CFR 2.206 process, the purpose of informal public hearing, and a brief summary of the Petitions (15 minutes); time for the Petitioner to explain the basis of the Petitions (45 minutes); time for the NRC to ask the Petitioner questions for the purposes of clarification (15 minutes); time for the licensees to address the issues raised in the petition (30 minutes for each licensee); time for the NRC to ask the licensees questions for the purposes of clarification (15 minutes each, following licensees' presentations); time for public comments relative to the Petition (45 minutes); and time for the licensees' and Petitioner's final statements (15 minutes).

Members of the public who are interested in presenting information relative to the Petitions should notify the NRC official named below, 5 working days prior to the hearing. A brief summary of the information to be presented and the time requested should be provided in order to make appropriate arrangements. Time allotted for presentations by members of the public at all locations will be determined based upon the number of requests received and will be announced at the beginning of the hearing. The order for public presentations will be determined on a first received—first to speak basis. Written statements should be mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–13H03, Attention: Robert Fretz, Washington, D.C. 20555.

Requests for the opportunity to present information can be made by contacting Robert Fretz, Project Manager, Division of Reactor Projects III/IV, at (301) 415–1324 between 7:00 a.m. to 3:30 p.m. (EST), Monday—Friday. Persons planning to attend this informal public hearing are urged to contact the above NRC representative 1 or 2 working days prior to the informal public hearing to be advised of any changes that may have occurred.

Directions to the video teleconferencing sites located in Baton Rouge, Cleveland and Painesville are provided below; however, participants are urged to consult local maps and directories for more detailed information to verify exact location.

To Baton Rouge VTC site at LSU from Interstate Highways I–10 and I–12 (East and West): From I–10, take one of the two exits identified for the Louisiana State University and follow the signs to the LSU Campus. Follow the signs to the LSU Visitors' Center. Members of the public will need to pick up a parking permit at the Visitors' Center. Visitors will be allowed to park along Tower Drive or utilize meter parking provided. Additional parking information may be obtained at the Visitors' Center. The video conference will be held in Room 202, Coates Hall, which is located within the Quadrangle at LSU. To Baton Rouge VTC site at LSU from St. Francisville: From US–61 South, take the I–110 exit toward Baton Rouge and merge onto I–110 South; follow I–110 to I–10. Take one of the two exits identified for Louisiana State University and follow the directions to the Visitors' Center and Coates Hall above.

Members of the Public are advised that parking at LSU is limited and are urged to arrive at the LSU Campus early in order to obtain available parking. The public is welcome to utilize the LSU Student Union facilities for lunch prior to the start of the informal public hearing.

To Cleveland VTC from Airport: Take I–71 North to East 9th Street exit of the Innerbelt; travel North on East 9th Street to St. Clair Avenue. From I–77 North: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Eastbound: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Westbound: Take the East 9th Street exit; turn left onto East 9th Street to St. Clair Avenue; turn left on St. Clair Avenue for parking.

To the Lake Erie College (LEC) VTC facility from Interstate 90: From I–90, take SR–44 North toward Painesville. Exit at SR–2 North/East and follow SR–2 to the SR–283 exit. Take SR–283 to US Route 20, and turn right on US–20. Lake Erie College is located on US–20. Heading from Painesville, take the second drive (left turn) into the Lake Erie College campus. There are two large parking lots available to the public on the left. The parking lot for Holden Center will be the second lot on the left. To Lake Erie College VTC facility heading East on US Route 20: Take the first drive (right turn) into the LEC campus. There are two large parking lots available to the public on the left. The parking lot for Holden Center will be the second lot on the left. The Distance Learning Center is located in Room 302 of the Arthur S. Holden Center.

Dated at Rockville, Maryland, this 12th day of February 1999.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**

*Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–3949 Filed 2–17–99; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

## Florida Power Corporation, et al. (Crystal River, Unit 3); Correction of Exemption

**I**

The Florida Power Corporation, et. al. (FPC or the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of Crystal River Unit 3. The license provides that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site located in Citrus County, Florida.

**II**

With respect to certain generic issues for facilities operating prior to January 1, 1979, except to the extent set forth in 10 CFR 50.48(b), 10 CFR Part 50, Appendix R, sets forth fire protection features required to satisfy general design Criterion 3 of the Commission's regulations. On October 29, 1997, the NRC granted to the licensee an exemption from certain of these requirements. By letter dated March 25, 1998, as revised March 27, 1998, the licensee informed the NRC that the exemption contained errors primarily regarding the designations of fire zones and fire areas and requested that the exemption be reissued to correct the errors.

**III**

The NRC has reviewed the proposed corrections submitted by the licensee and concludes that the requested corrections to the exemption are appropriate. The specific corrections are as follows:

1. In Section III, page 3, change lines 5 and 6 to read ''* * * auxiliary building fire zones AB–95–3B and G, AB–119–6A (elevations 95 and 119) and the intermediate building fire zones IB–119–201A and IB–119–201B (elevation 119).'' In Section IV, page 9, change lines 3 and 4 to read ''* * * fire zones AB–95–3B and G, AB–119–6A (elevations 95 and 119) and the intermediate building fire zones IB–119–201A and IB–119–201B (elevation 119), would provide. * * *'' A fire zone is a subpart of a fire area and is designated by the addition of a letter identifier. Thus, fire zone AB–95–3B is a part of fire area AB–95–3. The staff inadvertently used the terminology for a fire area when listing the fire zones for which an exemption had been requested, and thus the correction to change the wording to fire zone is appropriate. In addition, in the list of fire zones for which the exemption applied, the staff inadvertently omitted fire zone IB–119–201B. An exemption for this fire zone was requested by the licensee, was discussed in the Safety Evaluation (SE) supporting the exemption, and approved by the staff. Therefore, correcting the wording to include fire zone IB–119–201B in the list of fire zones is appropriate.

2. In Section III, page 3, change the 5th line from bottom of page to read, ''Auxiliary building hallway AB–95–3B.'' Due to a typographical error the fire zone identification for the auxiliary building hallway was identified as AB–95–3BA. The correct designation is AB–95–3B.

3. In Section III, page 5, change line 1 to read ''Auxiliary building hallway AB–119–6A.'' The discussion of fire zone AB–119–6A was inadvertently labeled as AB–95–3G. Fire zone AB–AB–95–3G was discussed in the previous paragraph of the SE. The description of the fire zone in this paragraph is for fire zone AB–119–6A. Therefore, the change to accurately reflect the correct fire zone is appropriate.

4. In Section III, page 5, change the 8th line from bottom of page to read ''This zone connects the industrial cooler room to the auxiliary building. * * *'' Fire zone IB–119–201A is a corridor which connects the industrial cooler room to the auxiliary building. Due to a typographical error, the words were transposed to read industrial room cooler. Therefore, the correction of the wording is appropriate.

**IV**

In consideration of the foregoing, the Commission hereby corrects the specific exemption from 10 CFR Part 50, Appendix R, Section III. G, granted on October 29, 1997, for Crystal River Unit 3, as reflected above.

This Correction of Exemption is effective upon issuance.

Dated at Rockville, Maryland, this 10th day of February 1999.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 99–3947 Filed 2–17–99; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

February 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of February 1, 1999, of three rescission proposals that have been pending for less than 45 days and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of February 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment B shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of February 1, 1999, $1.6 billion in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998

As of this date, the February 1, 1999, special message has not been published.

**Jacob J. Lew,**

*Director.*

ATTACHMENT A.—STATUS OF FY 1999 RESCISSIONS

[in millions of dollars]

| | Budgetary resources |
|---|---|
| Rescissions proposed by the President | 35.0 |
| Rejected by the Congress | |
| Currently before the Congress | 35.0 |

ATTACHMENT B.—STATUS OF FY 1999 DEFERRALS

[in millions of dollars]

| | Budgetary resources |
|---|---|
| Deferrals proposed by the President | 1,680.7 |
| Routine Executive releases through February 1999 (OMB/Agency releases of $130.7 million) | −130.7 |
| Overturned by the Congress | |
| Currently before the Congress | 1,550.0 |

BILLING CODE 3110–01–P

**ATTACHMENT C**
**Status of FY 1999 Rescission Proposals - As of February 1, 1999**
**(Amounts in thousands of dollars)**

| Agency/Bureau/Account | Rescission Number | Amounts Pending Before Congress: Less than 45 days | Amounts Pending Before Congress: More than 45 days | Date of Message | Previously Withheld and Made Available | Date Made Available | Amount Rescinded | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF THE INTERIOR** | | | | | | | | |
| Bureau of Land Management | | | | | | | | |
| Management of Lands and Resources | R99-1 | 6,800 | | 2-1-98 | | | | |
| **EXECUTIVE OFFICE OF THE PRESIDENT** | | | | | | | | |
| Unanticipated Needs | | | | | | | | |
| Unanticipated Needs for Natural Disasters | R99-2 | 10,000 | | 2-1-98 | | | | |
| **INTERNATIONAL ASSISTANCE PROGRAMS** | | | | | | | | |
| International Security Assistance | | | | | | | | |
| Foreign Military Financing Loan Program Account | R99-3 | 18,240 | | 2-1-98 | | | | |
| **TOTAL, RESCISSIONS** | | **35,040** | | | | | | |

[FR Doc. 99–3997 Filed 2–17–99; 8:45 am]
BILLING CODE 3110–01–C

**ATTACHMENT D**
**Status of FY 1999 Deferrals - As of February 1, 1999**
**(Amounts in thousands of dollars)**

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Message | Releases(-): Cumulative OMB/ Agency | Releases(-): Congressionally Required | Congressional Action | Cumulative Adjustments | Amount Deferred as of 2-1-99 |
|---|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF STATE** | | | | | | | | | |
| Other | | | | | | | | | |
| United States Emergency Refugee and Migration Assistance Fund | D99-1 | 82,858 | 17,724 | 10-22-98 | | | | | 100,581 |
| **INTERNATIONAL ASSISTANCE PROGRAMS** | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Economic Support Fund | D99-2 | 84,777 | | 10-22-98 | | | | | |
| | | | 1,310,376 | 2-1-99 | 37,727 | | | | 1,357,427 |
| Agency for International Development | | | | | | | | | |
| International Disaster Assistance | D99-3 | 185,000 | | 2-1-99 | 93,000 | | | | 92,000 |
| **TOTAL, DEFERRALS** | | **352,635** | **1,328,100** | | **130,727** | | | | **1,550,008** |

## OFFICE OF MANAGEMENT AND BUDGET

### Discount Rates for Cost-Effectiveness Analysis of Federal Programs

**AGENCY:** Office of Management and Budget.

**ACTION:** Revisions to Appendix C of OMB Circular A–94.

**SUMMARY:** The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

**DATES:** The revised discount rates are effective immediately and will be in effect through January 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Anderson, Office of Economic Policy, Office of Management and Budget, (202) 395–3381.

**Joseph J. Minarik,**

*Associate Director for Economic Policy, Office of Management and Budget.*

**Appendix C—(Revised January 1999); Discount Rates for Cost-Effectiveness, Lease Purchase, and Related Analyses**

*Effective Dates.* This appendix is updated annually around the time of the President's budget submission to Congress. This version of the appendix is valid through the end of January, 2000. Copies of the updated appendix and the Circular can be obtained from the OMB Publications Office (202–395–7332) or in an electronic form through the OMB home page on the world-wide WEB, http://www.whitehouse.gov/WH/EOP/omb. Updates of this appendix are also available upon request from OMB's Office of Economic Policy (202–395–3381), as is a table of past years' rates.

*Nominal Discount Rates.* Nominal interest rates based on the economic assumptions from the budget are presented below. These nominal rates are to be used for discounting nominal flows, which are often encountered in lease-purchase analysis.

NOMINAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES [IN PERCENT]

| 3-year | 5-year | 7-year | 10-year | 30-year |
|---|---|---|---|---|
| 4.7 | 4.8 | 4.9 | 4.9 | 5.0 |

*Real Discount Rates.* Real interest rates based on the economic assumptions from the budget are presented below. These real rates are to be used for discounting real (constant-dollar) flows, as is often required in cost-effectiveness analysis.

REAL INTEREST RATES ON TREASURY NOTES AND BONDS OF SPECIFIED MATURITIES [IN PERCENT]

| 3-year | 5-year | 7-year | 10-year | 30-year |
|---|---|---|---|---|
| 2.6 | 2.7 | 2.7 | 2.7 | 2.9 |

Analyses of programs with terms different from those presented above may use a linear interpolation. For example, a four-year project can be evaluated with a rate equal to the average of the three-year and five-year rates. Programs with durations longer than 30 years may use the 30-year interest rate.

[FR Doc. 99–3883 Filed 2–17–99; 8:45 am]

BILLING CODE 3110–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Provision of Specialized or Technical Services to State and Local Units of Government by Federal Agencies Under Title III of the Intergovernmental Cooperation Act of 1968

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of proposed supplemental revisions to OMB Circular A–97.

**SUMMARY:** The Office of Management and Budget (OMB) publishes a notice of proposed supplemental revisions to OMB Circular No. A–97, ''Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government, Under Title III of the Intergovernmental Cooperation Act of 1968.'' This revision supplements OMB's proposed revisions to the Circular published in the **Federal Register** on January 14, 1998 (63 FR 2288), by proposing revisions to the certification process in paragraph 7.c. of the Circular. The proposed new certification requirements are intended to further the Circular's policy of ensuring that Federal agencies do not provide commercial services to State and local governments that they can procure reasonably and expeditiously from the private sector through ordinary business channels.

**DATES:** Written comments on the proposed supplemental revisions must be received on or before April 19, 1999.

**ADDRESSES:** Comments regarding the proposed changes to OMB Circular A–97 should be addressed to Mr. David Childs, Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, FAX Number (202) 395–7230. Comments regarding the collection of information requirements should be addressed to: Mr. Edward Springer, OMB Desk Officer, Office of Information and Regulatory Affairs, OMB, Room 10236, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Childs, Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, N.W., Washington, D.C. 20503, Telephone Number: (202) 395–6104.

**SUPPLEMENTARY INFORMATION:**

### Availability

Copies of the current OMB Circular A–97 may be obtained by contacting the Executive Office of the President, Office of Administration, Publications Office, Washington, D.C. 20503, at (202) 395–7332, along with Circular A–76 (''Performance of Commercial Activities'') and its March 1996 Supplemental Handbook. These Circulars are also accessible on the OMB Home page. The online OMB Home

page address (URL) is *http://www.whitehouse.gov/WH/EOP/omb.*

On January 14, 1998, OMB published in the **Federal Register** (63 FR 2288) proposed revisions to OMB Circular A–97, ''Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government, under Title III of the Intergovernmental Cooperation Act of 1968.

In response to the notice of proposed revisions, comments were submitted to OMB by one Federal agency, two private sector organizations, and one congressional staff person. Included within the comments received were concerns regarding paragraph 7.c. of the Circular. This notice responds to those comments and proposes revision to paragraph 7.c. (As noted at the end of this notice, other comments were received regarding the proposal. OMB will respond to those comments when it takes final action on the January 1998 notice and on this supplemental notice.)

Among its requirements, paragraph 7 has provided that Federal agencies shall not provide specialized or technical commercial services to State or local governments unless the Federal agency receives a written request to provide the service from the State or local government; the requesting State or local government certifies that it cannot reasonably and expeditiously procure such services through ordinary business channels; and the Federal agency is already providing the service for its own use in accordance with OMB Circular A–76.

In the proposed January 1998 revisions, these requirements were retained. However, OMB did propose to amend paragraph 7.c. so as to clarify that, before a Federal agency can provide ''commercial'' services to a State or local government, the Federal agency must first have conducted a cost comparison under Circular A–76 that supports the determination by the Federal agency to provide the service for its own use (63 FR 2289). This proposed clarification would ensure that the Federal provider of a commercial service had itself competed with the private sector (with respect to providing the service for its own use) and that therefore the services to be provided to the State or local government would be by a best value offeror.

In response to the January 1998 proposed revisions, several concerns were expressed by commenters regarding the certification requirement of paragraph 7.c. One concern was that a one-time certification (as currently required by the Circular) may become outdated over the years by changes in technology, in industry, or in Federal, State or local procurement systems. Another concern was that the Circular's certification requirement, in its current form, is not sufficient to ensure that the requested services cannot be reasonably and expeditiously procured by the State and local government through ordinary business channels. It was suggested that the Federal agency, upon receiving a State or local government request to provide a service, issue its own public announcement/solicitation in the Commercial Business Daily and the **Federal Register** to identify private sector interest. Finally, one commenter suggested that the entire OMB Circular A–97 certification process be included in the Federal Acquisition Regulations.

These concerns have prompted OMB to conduct a further review of the longstanding Circular A–97 certification requirement. As a result of this review, OMB is supplementing its proposed revisions to the Circular by proposing additional changes to paragraph 7.c. Under these changes, State or local governments that currently obtain services from Federal agencies would have to submit renewed certifications by September 30, 2000, in order for the Federal agencies to be able to continue to provide such services after that date. Thereafter, the certifications must be renewed every five years.

Under the supplemental proposal, the certification would also include additional information. In support of its certification, the State or local government in its submission must outline how it solicited private sector interest in performing the service and must briefly explain the basis for its determination that it cannot procure the service, reasonably and expeditiously, through ordinary business channels. Each certification, including each five-year renewal certification, must include updated information regarding the ability of the State or local government to procure the requested service through ordinary business channels. Finally, each Federal agency must maintain an inventory of the services that it is providing to State and local governments, and must retain copies of the certifications. The inventories and certifications would be publicly available upon request.

OMB believes that these proposed revisions to the certification process will ensure that the Federal government will not provide commercial services to State and local governments that they can procure, reasonably and expeditiously, through ordinary business channels.

OMB is not proposing to adopt the other suggestions that we received concerning the certification process. In light of the existing certification process and the revisions to it that are proposed in this notice, it would be unnecessarily burdensome to require Federal agencies to issue their own public solicitations and announcements before responding to a request by a State or local government for a service. Finally, it would not be appropriate to place Circular A–97 in the Federal Acquisition Regulations (FAR). The FAR addresses the procurement of goods and services by the Federal government. Under Circular A–97, the Federal government is not procuring a service, but instead is providing one.

In response to the January 1998 **Federal Register** notice, OMB received other comments regarding Circular A–97 and the proposed revisions to it. OMB will be responding to those comments, and to the comments received in response to this notice, when it takes final action on the January 1998 notice and this supplemental notice.

### Regulatory Flexibility Act, Unfunded Mandates Reform Act, and Executive Order 12866

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the revisions to Circular A–97 that were proposed in January 1998, together with the supplemental revisions proposed in this notice, would not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed revisions make largely procedural changes to the requirements of the Circular; the general intent and overall policy structure of the Circular would not be substantively changed by the adoption of these proposed revisions. For purposes of the Unfunded Mandates Reform Act of 1995 (Public Law. 104–4), as well as Executive Order No. 12866, this proposal would not significantly or uniquely affect small governments, and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more.

### Paperwork Reduction Act

This proposal contains collection of information requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In support of its request that a Federal agency provide a service, a State or local government would have to submit, on a 5-year recurring basis, a certification that is already required that it cannot procure the service, reasonably and expeditiously, through ordinary business channels. State or local governments that currently obtain services from Federal agencies would

have to submit renewed certifications by September 30, 2000, in order for the Federal agencies to be able to continue to provide such authorized services after that date. Thereafter, the certifications must be renewed every five years in order for the Federal agencies to continue to provide the authorized services. In support of its certification, the State or local government, in its submission to the Federal agency, must outline how it solicited private sector interest in performing the service and must briefly explain the basis for its determination that it cannot procure the service, reasonably and expeditiously, through ordinary business channels. Each certification (including the certifications that are due by September 30, 2000, certifications for new services, and the five-year renewal certifications) must include up-to-date information regarding the ability of the State or local government to procure the requested service through ordinary business channels.

OMB estimates that it would take approximately 5 hours for a State or local government to collect the information requested, and would take approximately 2 hours for the State or local government to prepare and submit the information. OMB estimates that there will be 1500 submissions regarding currently-provided services to be submitted by September 30, 2000, and approximately 300 submissions for new services per year. The total burden estimate for currently provided services is 10,500 hours and 2,100 hours annually thereafter.

Comments are solicited concerning the proposed collection of information requirements to: (1) Evaluate whether the proposed collection of information is necessary for the proper functions of Circular A–97 including whether the information will have practical utility; (2) Evaluate the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden on those who are to respond, such as using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be sent to the persons specified above (see **ADDRESSES**).

**Jacob J. Lew,**

*Director.*

OMB hereby proposes to further amend OMB Circular A–97, as proposed to be revised at 63 FR 2288, January 14, 1998, by revising paragraph 7.c. to read as follows:

7. Conditions Under Which Services May Be Provided

The specialized or technical services provided under Title III of the Act and this Circular may be provided only under the following conditions:

* * * * *

c. Such services will not be provided unless—

1. The agency providing the services is providing similar services for its own use and, if commercial in nature, are being provided in accordance with a cost comparison conducted under the policies set forth in the Office of Management and Budget's Circular No. A–76, ''Performance of Commercial Activities,'' (Revised August 3, 1983) and its March 1996 Revised Supplemental Handbook.

2. The requesting State or local government has certified that the requested service has been offered to private sector providers and cannot be procured reasonably and expeditiously through ordinary business channels. In order for a Federal agency to continue to provide a current service to a State or local government after September 30, 2000, the Federal agency must receive a renewed certification from the State or local government prior to that date. Thereafter, renewed certifications must be received every five years in order for a Federal agency to continue to provide the service. In support of its certification, the State or local government, in its submission to the Federal agency, must outline how it solicited private sector interest in performing the service and must briefly explain the basis for its determination that it cannot procure the service, reasonably and expeditiously, through ordinary business channels. Each certification (including the renewed certifications that are due by September 30, 2000, certifications in support of new requests, and the subsequent five-year renewal certifications) must include up-to-date information regarding the ability of the State or local government to procure the requested service through ordinary business channels. Each Federal agency must maintain an inventory of the services that it is providing to State and local governments, and must retain copies of the certifications. The inventories and certifications shall be publicly available upon request.

* * * * *

[FR Doc. 99–3882 Filed 2–17–99; 8:45 am]

BILLING CODE 3110–01–P

## POSTAL SERVICE

### Sunshine Act Meeting

**TIMES AND DATES:** 1:00, p.m., Monday, March 1, 1999; 8:30 a.m., Tuesday, March 2, 1999.

**PLACE:** Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

**STATUS;** March 1 (Closed); March 2 (Open).

**MATTERS TO BE CONSIDERED;**

Monday, March 1,—1:00 p.m. (Closed)

1. Filing with the Postal Rate Commission for Nonletter-size Business Reply Mail.
2. Strategic Alliance.
3. REMITCO Market Test Expansion.
4. Office of the Inspector General FY 1999 Performance Plan.

Tuseday, March 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 1–2, 1999.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Briefing on the Year 2000.
4. Update on the Breast Cancer Research Semipostal Stamp.
5. Briefing on Celebrate the Century Stamp and Education Program.
6. Tentative Agenda for the March 29–30, 1999, meeting in Washington, D.C.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

**Thomas J. Koerber,**

*Secretary.*

[FR Doc. 99–4204 Filed 2–16–99; 3:25 p.m.]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–23691; 812–11240]**

### Scudder Kemper Investments, Inc., et al.; Notice of Application

February 11, 1999.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

*Summary of Application:* Applicants request an order that would permit them to implement a ''fund of funds''

arrangement. The fund of funds would invest in funds in the same group of investment companies, and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act. The order also would permit the fund of funds to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) of the Act.

*Applicants:* Scudder Kemper Investments, Inc. (''Adviser''); Kemper Distributors, Inc. (''Distributor''); Farmers Investment Trust (''Trust''), on behalf of its series (Income Portfolio, Income with Growth Portfolio, Balanced Portfolio, Growth with Income Portfolio, and Growth Portfolio); and Investment Trust, on behalf of its series (Scudder Growth and Income Fund); Scudder Securities Trust, on behalf of its series (Scudder Small Company Value Fund); Scudder International Fund, Inc., on behalf of its series (Scudder International Fund); Kemper Value Series, Inc., on behalf of its series (Kemper-Dreman High Return Equity Fund); Scudder Portfolio Trust, on behalf of its series (Scudder Income Fund); Kemper U.S. Government Securities Fund; Kemper High Yield Series, on behalf of its series (Kemper High Yield Fund); and Cash Account Trust, on behalf of its series (Money Market Portfolio) (collectively, the ''Funds'').

*Filing Dates:* The application was filed on July 31, 1998, and an amendment to the application was filed on January 12, 1999. Applicants also have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 5, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Adviser, 345 Park Avenue, New York, NY 10154–0010; Trust, Distributor, and Funds, 222 South Riverside Plaza, Chicago, IL 60606–5808.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Kane, Senior Counsel, at (202) 942–0615, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone 202–942–8090).

## Applicants' Representations

1. The Trust and the Funds are organized as either Massachusetts business trusts or Maryland corporations and are registered under the Act as open-end management investment companies. The Adviser is registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Trust and the Funds.

2. Applicants request relief to permit the series of the Trust and any other registered open-end management investment company that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Trust (collectively, the ''Asset Allocation Funds''), to purchase shares of series of the Funds and other registered open-end management investment companies or series thereof that are part of the same ''group of investment companies'' as the Asset Allocation Funds (collectively, the ''Underlying Portfolios'').[1] The Asset Allocation Funds also would invest in other registered open-end management investment companies that are not part of the same group of investment companies as the Asset Allocation Funds (the ''Other Portfolios'') in reliance on section 12(d)(1)(F) of the Act, discussed below.

3. With respect to an Asset Allocation Fund's investment in Other Portfolios, applicants also seek an exemption from the sales load limitation in section 12(d)(1)(F) of the Act. Applicants state that the proposed structure of the Asset Allocation Funds will provide a consolidated and efficient means through which investors can have access to a comprehensive investment vehicle.

## Applicants' Legal Analysis

*A. Section 12(d)(1) of the Act*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) the acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the SEC; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Section 12(d)(10(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Asset Allocation Funds will invest in shares of the Other Portfolios, they cannot rely

[1] Applicants request relief for each existing or future registered open-end management investment company or series of such a company that is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Trust, and (1) is, or will be advised by the Adviser or by any entity controlling, controlled by, or under common control with the Adviser; or (2) for which the Distributor or any entity controlling, controlled by, or under common control with the Distributor serves as principal underwriter. Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

on the exemption from section 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Asset Allocation Funds will invest in Other Portfolios in reliance on section 12(d)(1)(F). If the requested relief is granted, shares of the Asset Allocation Funds will be sold with a sales load that exceeds 1.5%, subject to applicants' compliance with condition 3 of the application.

4. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Asset Allocation Funds to invest in the Underlying Portfolios and from section 12(d)(1)(F) to permit the Asset Allocation Funds to sell shares to the public with a sales load that exceeds 1.5%.

6. Applicants state that the Asset Allocation Funds' investments in the Underlying Portfolios do not raise the concerns about undue influence that sections 12(d)(1)(A) and (B) were designed to address. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of sales charges or other fees.

7. The Asset Allocation funds will invest in Other Portfolios only within the limits of section 12(d)(1)(F). Applicants believe that an exemption from the sales load limitation in that section is consistent with the protection of investors because applicants' proposed sales load limit would cap the aggregate sales charges of the Asset Allocation Fund and the Other Portfolio in which it invests. Applicants have agreed, as a condition to the relief, that any sales charges, asset-based distribution and service fees relating to the Asset Allocation Funds' shares, when aggregated with any sales charges, asset-based distribution and service fees paid by the Asset Allocation Fund relating to its acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rules'').

*B. Section 17(a) of the Act*

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a) (3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Asset Allocation Funds and the Underlying Portfolios will be advised by the Adviser. As a result, applicants submit that the Asset Allocation Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under the common control of the Adviser, or because the Asset Allocation Funds own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Asset Allocation Funds could be deemed to be principal transactions between affiliated person under section 17(a).

2. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) of the Act to permit the Asset Allocation Funds to purchase and redeem shares of the Underlying Portfolios.

4. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Asset Allocation Funds in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Asset Allocation Funds and will be consistent with the policies as set forth in the registration statement of the Asset Allocation Funds.

**Applicants' Conditions**

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Asset Allocation Funds.

2. No Underlying Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the SEC permitting such Underlying Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions. No Asset Allocation Fund will acquire securities of an Other Portfolio if, at the time of acquisition, the Other Portfolio owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Asset Allocation Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Asset Allocation

Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Asset Allocation Funds, including a majority of the trustees who are not ''interested persons'' (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This funding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Funds.

5. Each Asset Allocation Fund's investments in Other Portfolios will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–41033; File No. SR–CBOE–98–48]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 To Proposed Rule Change By the Chicago Board Options Exchange, Inc. Relating to the Exchange's Rapid Opening System

February 9, 1999.

### I. Introduction

On November 4, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a new Rapid Opening System (''ROS''). On December 9, 1998, the CBOE filed Amendment Nos. 1 and 2 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 17, 1998.[4] The Commission received no comments regarding the proposal. On January 15, 1999, the CBOE filed Amendment No. 3 to the proposed rule change.[5] On February 9, 1999, the CBOE filed Amendment No. 4 to the proposed rule change.[6] This order approves the proposed ROS pilot until March 31, 2000, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment Nos. 3 and 4 to the proposed rule change and is simultaneously approving Amendment Nos. 3 and 4 on an accelerated basis.

### II. Background

Some variation exists as to how different trading crowds on the CBOE handle opening rotations today, but generally a crowd conducts a reverse rotation under which it opens further out series first and nearer term series later.[7] Once a trading crowd sets the quotes for a particular series, the series will automatically lock in the Exchange's Electronic Book if there are market orders, or limit orders between the bid/ask. In an Order Book Official (''OBO'') crowd,[8] floor brokers and OBOs then announced their respective positions to the crowd for final price discovery. That particular series remains locked until the opening price is manually entered by the book staff. Open trading for the series, however, does not commence until all series in the class have undergone these same opening price discovery procedures. Depending on the volatility in the marketplace and the number of orders received, an opening rotation may take anywhere from a few minutes to a half hour to complete. During the rotation, new orders queue up and cannot be addressed until open trading begins. In light of such delays, the Exchange now proposes to conduct its opening electronically through ROS. The Exchange believes that ROS should allow the Exchange to transition into open trading much faster than under the current system and that the backlog of orders that sometimes develops during the opening should rarely, if every, occur.

### III. Description of the Proposal

The CBOE proposes to adopt new CBOE Rule 6.2A, *Rapid Opening System*, and a related rule change to CBOE Rule 6.2 to govern the operation of, and the eligibility to participate in, the Exchange's new ROS. ROS would allow the Exchange to automate the opening of various option classes, thereby avoiding the lengthier opening rotations that can occur under the present circumstances when there is a large influx of orders entered before or during the opening rotation. As the opening occurs, fill reports on all participating orders would be generated automatically and immediately, opening market quotes and last sales would be disseminated, and market-makers would receive notification of assigned trades.

Because the new system allows quicker entry into open trading, the Exchange believes that ROS would serve all market participants. Currently, orders entered after the opening rotation begins are locked out. Such orders become subject to market risk as the quotes may change from the time the series is opened to the time the rotation is completed. The CBOE believes that ROS should enable the Exchange's market-makers to open option classes within seconds of the underlying security's opening.

*Availability of ROS*

The Exchange intends to introduce ROS to a few classes to test the proposed new system. The Exchange expects that soon after its introduction ROS will be implemented throughout the floor, wherever it may be accommodated. Pursuant to its authority under CBOE Rule 6.2, the appropriate Floor Procedure Committee (''FPC''), chairman, or designee may decide where ROS should be used. Once implemented, the Exchange expects ROS will be used routinely and daily for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange replaced its original proposal. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, dated December 8, 1998 (''Amendment No. 1''). In Amendment No. 2, the Exchange corrected technical errors in the proposal. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated December 8, 1998 (''Amendment No. 2'').

[4] Securities Exchange Act Release No. 40780 (December 10, 1998), 63 FR 69696.

[5] In Amendment No. 3, the Exchange clarified the operation of the new electronic system. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated January 13, 1999 (''Amendment No. 3'').

[6] In Amendment No. 4, the Exchange further clarified the conduct of openings and priority under the new system and its intention to implement the system on a pilot basis. *See* Letter from Timothy Thompson, Director, Regulatory Affairs, Legal Department, Exchange, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 9, 1999 (''Amendment No. 4'').

[7] *See* Amendment No. 3.

[8] The CBOE also uses Designated Primary Market Maker (''DPM'') crowds, where DPMs conduct some of the functions otherwise performed by an OBO.

those option classes where it is employed.[9]

ROS could be used to open a class of options at the beginning of the day and under certain circumstances (*e.g.*, following a trading halt) to re-open a class of options during the trading day. The appropriate FPC for each option class traded on the floor would determine the availability of ROS. Because the initial version of ROS employs the Exchange's AutoQuote system (''AutoQuote''), only those open classes that employ AutoQuote may use ROS initially. While most option classes on the floor use AutoQuote, some index options (including DJX, NDX, and OEX [10]) and classes traded at certain DPM trading stations do not currently employ AutoQuote. To allow the use of ROS, DPMs, that do not use AutoQuote may decide to do so (or may be required to do so by the appropriate FPC), at least at the opening. Later versions of ROS may accommodate inputs from systems other than AutoQuote.

*Operation of ROS*

To determine a single opening price, CBOE market-makers will provide AutoQuotes for all series to ROS. Generally, one participating market-maker will determine the variables that will determine the AutoQuote values. However, any participating market-maker will have the opportunity to improve individual quotes before the AutoQuote values are sent to ROS. ROS will not open a class until it has received AutoQuotes for all eligible series. The market-makers participating in ROS for a particular option class will determine collectively when they will send the AutoQuote values to ROS. In making this determination, the participating market-makers will have access to information that indicates the total contracts that would be traded on the opening. The information will be available on a screen at each trading station that employs ROS. Each screen will provide the following information: the number of market-makers logged onto ROS for the class, the total delta of all the orders in a particular class of options, the total contracts to trade, the last sale price of the underlying, and AutoQuote calculation values for the underlying. Individuals at the trading station also can access a detail screen that provides information on the number of long and short contracts to trade on a series basis, series AutoQuote values, contracts to trade on a series basis, total delta on a series basis, and thresholds for the class.

Before the start of the trading day, participating market-makers, who together share the obligation to trade at the opening price, will have established threshold for the aggregate risk and aggregate number of contracts to trade that they as a group are willing to assume for a particular class. If the actual aggregate risk and number of contracts to trade at the opening are both below these established thresholds, ROS will automatically open that particular class without any further intervention by the market-makers once AutoQuote has received input of the underlying stock value. In these cases, the opening quotes and last sales will be disseminated immediately. In those cases where either the aggregate risk or the aggregate contracts to trade exceed the established thresholds, a participating market-maker may manually adjust the AutoQuote values as is done under the opening rotations currently.

To adjust the AutoQuote values, a participating market-maker must touch a button to ''lock'' the particular class. The ''lock'' feature allows market-makers to adjust the AutoQuote values to account for the risk in the positions and contracts to trade, while incoming orders queue (just as orders queue during opening rotations today). Orders entered during the ''lock'' will not be eligible to participate in the opening. The Exchange expects that the lock feature generally only will be used for very brief periods.[11] Once the market-makers have adjusted AutoQuote, they will send the values to Ross and the class will open.

Regardless of whether market-makers adjust the AutoQuote values, the single opening price that ROS calculates for each series will be determined based upon the bid/ask values sent from AutoQuote (as they may be adjusted by the market-makers) and the orders contained in the book. The opening price will be set according to an algorithm, or a set of rules coded into the system, fed by the relevant AutoQuote and order information.[12] The CBOE represents that the algorithm was designed to maximize the number of customer orders able to be traded at or between the bid-ask values.

Once ROS determines an opening price, all customer orders that should be crossed at that opening price will be crossed. Any balance of orders will be assigned to participating market-makers if the opening price is at either the AutoQuote bid or offer.[13] Any orders that are not executed as part of the opening will remain in the Exchange's Electronic Book and will be reflected in the opening Bid or offer. Non-bookable orders (discussed below) that were presented to the OBO or DPM prior to the opening in accordance with proposed CBOE Rule 6.2A(a)(ii) will be filled by the market-makers in the crowd at the opening price if the order is ''deserving'' of such price.[14] As ROS completes the opening for each class, public customers will receive an

[9] Under the proposal, two Floor Officials may permit an OBO or DPM to use ROS on a class-by-class basis pursuant to Interpretation .01(b) of CBOE Rule 6.2.

[10] These are the Dow Jones Industrial Average, Nasdaq-100, and Standard & Poor's 100 index options.

[11] Under ROS, the Exchange expects classes to be locked for no more than thirty seconds. *See* Amendment No. 3.

[12] The algorithm rules, which ROS proceeds through in the following order, are:

(1) If there are more contracts to trade at the bid price than at any other price point, then the opening price will be set at the bid price. If the bid equals 0, then the ''zero bid rule'' will be used. This rule states that if there is a net to sell at 0, any buy volume will be crossed at 1/16 with the available sell volume. If there is a balance remaining to sell, the sell volume will be booked at 1/16. If there is no buy volume, then, as with the current EBook functionality, there are 0 to sell at 1/16 and the orders will be booked at 1/16.

(2) If there are more contracts to trade at the offering price than at any other price point, then the opening price will be set at the offering price.

(3) If neither (1) or (2) is satisfied, then ROS will look for other price points at which the maximum number of contracts are priced to be traded.

(4) There may be no contracts to trade at any of the price points.

(5) If there is only one price point at which the maximum number of contracts may be traded, then ROS will open at that price point.

(6) If there are multiple price points at which the maximum number of contracts may be traded then ROS will follow rules 7 through 10.

(7) If there is only one price point at which the net between the number of contracts to buy and sell is 0 and at which the maximum number of contracts can be traded, then ROS will open at that price point.

(8) If there are multiple points where the net between buys and sells is 0 and at which the maximum number of contracts can be traded, then ROS will calculate what the best quote will be coming out of rotation, and open at the net zero point closest to the midpoint of the best quote.

(9) If there is not a single net zero point closest to the midpoint of the best quote, then ROS will use the ''net change rule'' (discussed below) to determine the opening price.

(10) If there are no points where the net between buys and sells is zero and at which the maximum number of contracts can be traded, then ROS will open at a price at which the maximum number of contracts can be traded and where the net between buys and sells is greater than zero but less than or equal to the total number of contracts to buy or sell at that price. Use the net change rule if necessary.

Net change rule: If the direction of the last price change of the security underlying the option class is positive and the option is a call, then ROS will open at the higher price. If the option is a put, ROS will open at the lower price. For a negative change for the underlying, if it is a call option ROS will open at the lower price. If it is a put option, ROS will open at the higher price.

[13] If the opening price is between the AutoQuote bid or offer, then no trades will be assigned to participating market-makers.

[14] *See* note 17 *infra.*

electronic fill report for each order traded. Quotes and list sales will be disseminated to the Options Price Reporting Authority. Market-makers will be informed of their participation via an electronic trade notification or a paper notice, and trade match records will be created for clearance.

*Obligations and Eligibility of Market-Makers*

Each morning market-maker planning to participate on ROS must log on to ROS and identify the classes of options in which they will participate. If ROS is being employed in a DPM trading crowd, the DPM will be expected to participate on ROS. Any DPM designee (all of whom are permitted to act as both market-maker and floor brokers) would be entitled to log on to ROS and share equally in any trading imbalance at the opening price. To participate in the opening, the market-maker must log on prior to the opening or by some other earlier time designated by the appropriate FPC. (Similarly, in a delayed opening or a re-opening during the day, the participating market-maker must be logged on prior to the operation of ROS or by some earlier time.) Any market-maker that will be present at a particular trading station for the opening may log on to ROS for a class traded at that station,[15] but once a market-maker has logged on to ROS for that class during an expiration month, that market-maker must log on to ROS any time he is going to be present in the crowd at the opening during the remainder of the expiration cycle. This requirement is intended to ensure that those market-maker who participate in ROS will be obligated to participate on more volatile or busy days.

Two other provisions are intended to help ensure the viability of the system in various market situations. First, the appropriate Market Performance Committee (''MPC'') may require a market-maker to log on to ROS for specified classes traded at a particular trading station. Second, notwithstanding the limitations in proposed CBOE Rule 6.2A requiring the market-maker to be present in the crowd for the opening and to log on to ROS by a designated time, if insufficient market-maker participation exists for a particular class, two Floor Officials of the appropriate MPC will have the authority to long on to ROS those market-makes who are members of the trading crowd, as defined in CBOE Rule 8.50. Those Floor Officials also may allow market-makers in other classes of options to log on to ROS in such classes.

Participation on ROS will be monitored by the OBOs or DPMs at the particular trading station. The ROS screen in each trading crowd will indicate the number of market-makers that have signed on to ROS. If for any reason the OBO, the DPM, or the participating market-makers believe that the participation rate is inadequate, then the OBO or DPM may call Floor Officials either to have them log on other market-makers or conduct an opening rotation under the manual procedures currently employed.

*Participation Rate for ROS*

ROS will assign the contracts to trade for a particular class equally among all participating market-makers for that class to the extent possible. For example, if, after all customer orders have been crossed, there remain twenty-one contracts for the market-makers who are logged on the ROS to trade and there are four market-makers logged on to ROS for that class, then one market-maker would be assigned six contracts and the other three market-makers would be assigned five contracts.

*Order Participating on ROS and in the Opening*

When ROS is employed, all pre-open orders that are routed to the Exchange's Electronic Book will participate automatically in the opening process. All customer orders (both market and limit orders) without contingencies are eligible to be placed on the Electronic Book prior to the opening.

Orders that cannot be placed on the Electronic Book (non-bookable orders), including broker-dealer and customer contingency orders, will be accommodated manually in the opening. To entitle a on-bookable order to participate, the broker representing the order must inform the OBO or DPM and the market-makers that are logged on to ROS of the terms of the order (including limit price and volume) prior to the time the market-makers for a particular class lock that class under ROS. This notification deadline is the same time at which orders entered on the book will no longer be accepted in ROS which should help to ensure that different categories of orders are treated consistently.[16] This notification deadline will enable the quantity of orders and imbalance they represent to be taken into account in establishing the opening price.[17] Although these orders will not be represented in the ROS algorithm, the market-makers will be able to consider the effect of those orders when they decide whether to adjust their AutoQuote values.

Once ROS determines the opening price, the participating market-makers will trade at the opening price electronically with the imbalance of the booked orders and via open outcry with non-bookable orders that are ''deserving'' a fill[18] at the same opening price.[19] The Exchange anticipates that a

[15] Because the openings generally will occur simultaneously, typically it will be possible to participate on ROS only in those classes traded at one particular trading station on any given day. A market-maker is not permitted to log on to ROS for classes at two or more stations when those openings are expected to occur at approximately the same time.

[16] *See* Amendment No. 4.

[17] In Amendment Nos. 3 and 4, the exchange further explained the incorporation and execution of non-bookable orders at the opening. Market-makers will have the opportunity to adjust their AutoQuote to account for such orders, assisting efforts to price contracts fairly. *See* Amendment Nos. 3 and 4. Under certain circumstances, market-makers must adjust AutoQuote values to account for one of more non-booked limit orders. Market-makers will be required to make such adjustments if (i) the limit price of such non-booked orders is better than the AutoQuote bid or offer (as appropriate) and (ii) the imbalance of the non-booked orders that would be traded at such better limit price is equal to or greater than the imbalance or orders for that series in the book on the opposite side of the market. *See* Amendment No. 4.

[18] A non-bookable order will be filled for its entire size by market-makers in the crowd (assuming any contingency accompanying the order is satisfied) if that order is a (1) market order; (2) limit order and the limit price betters the opening price; or (3) customer limit order with a contingency where the limit price equals the opening price. If the order is a broker-dealer order and the limit price equals the opening price, the order will be entitled to be filled up to the lesser of the entire size of such order or an amount equal to a pro rata share of the orders assigned to the market-makers by ROS. If a broker holds more than one order to trade at the same limit price, that broker is nonetheless limited to no more than one pro rata share of the orders assigned to the market-makers by ROS. *See* Amendment No. 4.

Because the operation of ROS makes the application of traditional time priority rules difficult, the Exchange proposes to amend its priority rule, CBOE Rule 6.45, to reflect the above-stated method of filling non-bookable orders. The Exchange explains that under ROS, brokers are required to present their orders to the trading crowd before the market-makers finish adjusting the AutoQuote bid and offer. Notwithstanding the fact that the broker-dealer's order will always be entered prior to the market-makers's bid and offer, the Exchange believes that the market-makers must be able to participate at the opening price even if the opening price equals the limit price of a broker-dealer order because the market-makers are the group that ensures liquidity on the opening. *See* Amendment No. 4.

[19] The CBOE provided three scenarios to help illustrate the interaction of the various rules related to the manual handling of broker-dealer proprietary orders. For each of these scenarios, a broker-dealer presents an order to the crowd when the AutoQuote bid/offer is at 6–6½ and 4 market-makers are logged on to ROS for the relevant options class.

*Scenario 1:* There is no customer order to buy 50 contracts at the market in the Electronic book; there also is a broker-dealer order to sell 30 at a limit price of 6⅛. In this case, the market-makers in the crowd would not be expected to adjust their AutoQuote bid to reflect the broker-dealer bid because the demand to sell at a better price (30) is

future release of ROS will incorporate non-bookable orders electronically. The Exchange notes that there are few broker-dealer orders entered prior to the opening today and the Exchange believes this is likely to be true when ROS is employed on the floor.

*Surveillance of Market-Maker Procedures*

The market-makers participating on ROS will be required to price the contracts fairly, in a manner consistent with their obligations under CBOE Rule 8.7(b)(iv). In conjunction with the implementation of ROS, the Exchange plans to publish the regulatory circular to remind market-makers of their obligation to set AutoQuote fairly.[20] The Exchange believes that a number of factors including scrutiny by customers and firms representing customer orders will ensure that market-makers adjust the AutoQuote values consistent with their obligation. In addition, if an OBO or DPM notices any unusual activity in the setting of AutoQuote values, the OBO or DPM must fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's AutoQuote has an audit trail log that details every key stroke employed in the use of AutoQuote. This audit trail report can be studied in the event of any concerns with the way the AutoQuote values were established for ROS.

*Pilot Implementation*

ROS would be implemented on a pilot basis through March 31, 2000.[21]

## IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[22] Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change represents an effort to facilitate the execution of orders at the opening by providing market-makers with a means of establishing electronically a single opening price. ROS replaces what has become an increasingly cumbersome process of arriving at the opening price by manually progressing through series after series of an options class. Significantly, until this process is completed for an options class, open trading generally does not commence in any of the class' series. This delay of open trading results in a backlog of orders that missed the opening and queue while awaiting open trading. ROS should alleviate such backlogs, thus improving market efficiency for all market participants. By facilitating an expedited opening of options classes on the CBOE, ROS should remove an impediment to and help perfect the mechanism of a free and open market consistent with the CBOE's responsibilities under Section 6 of the Act. Moreover, by integrating features into ROS, such as the crossing of customer orders, and by permitting the participation of non market-maker broker-dealer orders in the opening process, the Commission believes that the proposal should promote fair participation in ROS by all market participants.

The Commission recognizes that certain aspects of ROS may require heightened scrutiny by the CBOE to ensure that market-makers are not permitted to use the flexibility they have to set an opening price to the disadvantage of investors and other market participants. In particular, ROS provides market-makers discretion to set certain thresholds and the AutoQuote value that drives the ROS algorithm. The Exchange has assured the Commission that it will ensure that market-makers exercise their discretion in a manner consistent with their obligation to price options fairly. The Commission expects that the CBOE will develop objective, quantifiable standards for ensuring that the market-makers are satisfying those obligations and to surveil for such compliance. The pilot offers an opportunity for the Commission to evaluate the Exchange's efforts at surveilling market-maker activities associated with ROS. Prior to permanent approval, the Commission expects to review the results of the applied surveillance program.

Although ROS is likely to greatly improve the opening on the CBOE, the Commission believes that the system can and should be improved to permit participation by orders that cannot presently be included on CBOE's Electronic Book. The Commission does not view the manual handling of non-bookable orders as the optimal solution for ensuring that those orders are fairly incorporated into the opening. Although market-makers may now adjust their AutoQuote manually to reflect non-bookable orders, it would be preferable for such orders to be electronically incorporated into a ROS opening to fully interact with customer orders on the Electronic Book.

Moreover, the proposed handling of non-bookable orders may result in such orders receiving an inferior level of priority than they would enjoy today. Although ROS and the proposed manual handling procedures require a sequence of events surrounding the opening that make traditional, strict time priority rules difficult to apply, the Exchange has proposed manual handling procedures that should minimize the proposal's impact on exactly which orders receive fills. For example, the Exchange clarified the participation rights of broker-dealer proprietary limit orders equal to the ROS opening price.[23] The Commission, however, expects that during the pilot period the Exchange will ensure that, in practice, non-bookable orders continue to receive fair treatment substantially comparable to that received today. Prior to permanent approval, the Commission expects the Exchange to develop a workable plan for electronic incorporation of non-bookable orders on ROS. Because such orders represent a small percentage of orders executed on the Exchange,[24] however, and because of the great potential benefits ROS has for the opening, the Commission believes that in the interim it is prudent to allow ROS to be implemented on a pilot basis to alleviate problems associated with delays in the transition to open trading.

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less than the supply to buy (50). The market-makers would sell 50 to the customer in ROS and manually buy 30 from the broker-dealer in the crowd at 6.

*Scenario 2:* There is one customer order to sell 50 contracts at the market in the Electronic book; there also is a broker-order to buy 50 at a limit price of 6⅛. In this case, the market-makers must adjust their AutoQuote bid to reflect the broker-dealer bid because the supply to buy at a better price satisfies all sellers. However, the market makers may also adjust the AutoQuote to 6⅛ for other reasons, such as a change in volatility. In either case, the market-makers would buy 50 from the customer in ROS at 6⅛. The market-makers would be required to sell 10 contracts (a pro rata share) to the broker-dealer at 6⅛. It is possible that the market-makers would fill the entire broker-dealer order at 6⅛.

*Scenario 3;* There is one customer order to sell 50 contracts at the market in the Electronic book; there also is a broker-dealer order to buy 50 at a limit price of 6. In this case, if the AutoQuote values do not change, the market-makers in the crowd would buy 50 from the customer in ROS at 6. The market-makers would be required to sell up to 10 contracts (a pro rata share) to the broker-dealer at 6. *See* Amendment No. 4.

[20] *See* Amendment No. 3.

[21] *See* Amendment No. 4.

[22] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact in efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See* Amendment No. 4.

[24] *See* Amendment No. 3.

The Commission finds good cause for approving proposed Amendment Nos. 3 and 4 prior to the thirteenth day after the date of publication of notice of filing of those amendments in the **Federal Register.** The amendments clarify the original proposal and the system's proposed operation, and propose implementing ROS on a pilot basis.[25] By implementing ROS on a pilot basis, the Exchange can immediately address difficulties associated with lengthy opening rotations and study ROS under market conditions while giving the Commission an opportunity to view the operation of ROS under market conditions before approving it permanently.

The Commission expects the CBOE to study issues related to the SEC's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of ROS. Among issues that the Exchange should explore are: how and when market-makers set ROS risk and size thresholds; how often such thresholds are exceeded and result in the adjustment of AutoQuote; the effect of AutoQuote adjustments on the quality of customer executions; any effects on existing order execution priority; and the handling of and adjustments made for non-bookable orders.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–48 and should be submitted by March 11, 1999.

[25] *See* Amendment Nos. 3 and 4.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–98–48), as amended, is approved through March 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–3958 Filed 2–17–99; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice # 2972]**

### Overseas Presence Advisory Panel; Notice of Establishment

The Department of State's Overseas Presence Advisory Panel is established for FY 1999. The Panel is determined by the Secretary of State to be in the public interest in connection with the performance of duties imposed on the Department by law. The Panel shall terminate on September 30, 1999, unless it is renewed or extended by appropriate action prior to that date.

The Advisory Panel will advise the Secretary of State with respect to the Department of State's responsibilities for ensuring appropriate U.S. Government representation in foreign countries commensurate with the effective conduct of foreign relations. The Panel is charged with preparing a report recommending the criteria by which the Department, working with Chiefs of Mission, might determine the location, size, and composition of overseas posts in the coming decade. The Panel is tasked with considering the level and type of representation required overseas in order effectively to conduct America's business in the face of new foreign policy priorities, a heightened security situation, and extremely limited resources. The Panel shall be comprised of prominent persons from government and private life who shall have expertise in governmental or non-governmental dealings with foreign countries, their people, and their institutions.

Dated: February 12, 1999.

**Ambassador William H. Itoh,**

*Executive Secretary, Overseas Presence Advisory Panel.*

[FR Doc. 99–3984 Filed 2–17–99; 8:45 am]

BILLING CODE 4710–35–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Announcement of Receipt of Notice To Withdraw Proposed Restriction on Operations of Stage 2 Aircraft at San Francisco International Airport, San Francisco, CA

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of Withdrawal of Proposed Restriction on Stage 2 Operations.

**SUMMARY:** The Federal Aviation Administration (FAA) has been notified by San Francisco International Airport (SFO), that it has withdrawn its proposed restriction on the operation of Stage 2 aircraft operations. The proposed restriction was announced in the **Federal Register** on September 28, 1998. In that notice SFO proposed to amend its current Noise Abatement Regulation 4(C), which currently restricts operation of Stage 2 aircraft between 11:00 p.m. and 7:00 a.m., locally, and requires operators to agree to adhere to SFO's preferential runway use program in order to operate aircraft during these hours. The proposed restriction also expanded the current restriction on nighttime operation of Stage 2 aircraft by (1) extending the restricted hours to 7:00 p.m. to 7:00 a.m. local time, (2) requiring operators to agree to adhere to SFO's preferential runway use program in order to operate aircraft during those hours, and (3) eliminating the existing exemption from restriction of operations between the hour of 6:00 a.m. to 7:00 a.m. local time, for Stage 2 aircraft operators that agree to adhere to SFO's preferential runway use program.

**EFFECTIVE DATES:** The San Francisco International Airport has provided notice of the withdrawal of the proposed restriction effective December 16, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Jean Caramatti, Secretary to the San Francisco Airport Commission, San Francisco International Airport, International Terminal, Fifth Floor, P.O. Box 8097, San Francisco, California 94128, Telephone: 650/794–5000.

Issued in Hawthorne, California on February 3, 1999.

**Herman C. Bliss,**

*Manager, Airports Division, AWP–600, Western-Pacific Region.*

[FR Doc. 99–4020 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Supplemental Draft Environmental Impact Statement: Pulaski County, Arkansas

**AGENCY:** Federal Highway Administration, (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Supplemental Draft Environmental Impact Statement (SDEIS) will be prepared for a proposed highway project in Pulaski County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Romero, Environmental Specialist, Federal Highway Administration, Arkansas Division, 700 West Capitol Avenue, Room 3130, Little Rock, Arkansas, 72201–3298, Telephone: (501) 324–6430.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Arkansas Highway and Transportation Department will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) on a proposal to construct a four-lane, divided, fully controlled access facility located on new alignment. In 1994, a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD) identified a selected alignment. However, a portion of this alignment was not compatible with the City of Sherwood's Master Street Plan and was not included in the Transportation Improvement Program (TIP) developed by Metroplan, the responsible Metropolitan Planning organization. Due to the time (3 years +) since the ROD and existence of the local concerns, a reevaluation was deemed necessary. This preliminary reevaluation resulted in the identification of a new alternative alignment more compatible with the City of Sherwood's Master Street Plan, thereby necessitating the need for the proposed Supplemental Environmental Impact Statement (SEIS).

The proposed project will primarily serve central Arkansas including Little Rock, North Little Rock, Sherwood, Jacksonville, and northern Pulaski County, Arkansas. The Supplemental Draft EIS will address a new alternative and three previously studied alternatives located between the Highway 107/Brockington Road interchange and the eastern boundary of Camp Robinson near Maryland Avenue and Batesville Pike. These three previously studied alternatives were evaluated in the project's Draft EIS in 1991 and Final EIS in 1994.

The Supplemental EIS will focus on the study area between Batesville Pike and Brockington Road in northern Pulaski County, since this is the portion of the proposed corridor where several alternative alignments are being considered. The remaining portions of the selected and approved Northbelt Freeway alignment to the east toward U.S. Highway 67/167 and to the west through Camp Robinson ending at the I–430/I–40 interchange will be reviewed only to a level to document if any substantial changes have taken place since the completion of the project's Final EIS.

In additional to documenting the engineering and environmental aspects of a new alignment alternative and updating three previously studied alignment alternatives, the SDEIS will provide a comparative analysis of the project's feasible alternatives with the primary goal of the identification of a preferred alternative for the entire freeway project from U.S. 67/167 to the I–430/I–40 interchange. This evaluation will also include a determination of how these project alternatives relate to Metroplan's and the City of Sherwood's Long-Range Plans and Master Street Plans.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organizations who have expressed interest in the project in the past. A formal public hearing will be held in the North Little Rock/Sherwood area during the circulation of the SDEIS. Public notice in major Arkansas newspapers including news releases and specific advertisements will be used to inform the public of the time and place of the public hearing. The SDEIS will be available for public and agency review and comment prior to the public hearings. The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency are cooperating agencies for the EIS. A formal scoping meeting for these Northbelt freeway alternatives will be held and an opportunity for public comment will be provided.

To ensure that the full range of issues related to this proposed action and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA Arkansas Division at the address provided above.

(Catalog of Federal Domestic Assistance Program 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: February 11, 1999.

**Elizabeth A. Romero,**

*Environmental Specialist FHWA, Little Rock, Arkansas.*

[FR Doc. 99–3938 Filed 2–17–99; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–325 (Sub–No. 1X)]**

### Florida Midland Railroad Company, Inc.—Abandonment Exemption—in Polk County, FL

Florida Midland Railroad Company, Inc. (FMID) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.18-mile line of railroad on the Lake Wales Spur from milepost SV–967.47 at Scenic Highway to milepost SV–967.65 at Fourth Street, in Lakes Wales, Polk County, FL. The line traverses United States Postal Service Zip Code 33853.

FMID has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 20, 1999, unless

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 1, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 10, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Thomas J. Litwiler, Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

FMID has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 23, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), FMID shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by FMID's filing of a notice of consummation by February 18, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Decided: February 12, 1999.

By the Board, Joseph H. Dettmar, Acting, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 99–3976 Filed 2–17–99; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Proposed Renewal of Information Collections; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of several information collections.

**DATES:** Written comments should be submitted by April 19, 1999.

**ADDRESSES:** Direct all written comments to the Communications Division, Attention: 1557-L299, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–5274, or by electronic mail to regs.comments@occ.treas.gov.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Jessie Gates or Camille Dickerson, (202)874–5090, Legislative and Regulatory Activities Division (1557-L299), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00am and 5:00pm on business days. You can make an appointment to inspect the comments by calling (202)874–5043.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following three information collections:

**1. Title: Fiduciary Activities of National Banks—12 CFR 9**

*OMB Number:* 1557–0140.

*Form Number:* None.

*Abstract:* This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

OCC regulations at 12 CFR part 9 require national banks with fiduciary powers to retain fiduciary records related to an account for three years after termination of the account or of related litigation. Part 9 also requires that national banks note annually in their board minutes the results of fiduciary audits. Part 9 also requires that national banks operate their collective investment funds in accordance with a written plan. The plan is analogous to a prospectus required for registered investment companies by Securities and Exchange Corporation requirements. In order to avail itself of certain regulatory exemptions, a national bank must submit its collective investment fund plan to OCC for approval. Finally, each national bank must prepare an annual financial report on each fund and notify participants of its availability.

The requirements in 12 CFR part 9 are located as follows:

Record retention: 12 CFR 9.8(b).

Noting audit in board minutes: 12 CFR 9.9(a) and (b).

Surrender of fiduciary powers: 12 CFR 9.17(a).

Disclosing plan: 12 CFR 9.18(b)(1).

Preparing/Amending plan: 12 CFR 9.18(b)(1).

Preparing financial report: 12 CFR 9.18(b)(6)(ii).

Disclosing financial report: 12 CFR 9.18(b)(6)(iv).

Requesting special exemptions: 12 CFR 9.18(c)(5).

National banks use these records to establish operational parameters for their collective investment funds and to disclose information to fund participants. Participants and other members of the public use the fund plan and report to obtain information about the fund, including its financial performance. The plan and the annual financial report inform and protect the public. The OCC uses the information in the examination process, to ensure bank compliance with provisions of 12 CFR 9.18, and to ensure bank safety and soundness.

Below are the OCC's current estimates of the paperwork attributable to 12 CFR part 9. These estimates were prepared pursuant to the notice-and comment rulemaking process undertaken in 1995 and were approved by OMB in February 1996.

*Type of Review:* Extension, without change, of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 1,000.

*Total Annual Responses:* 1,000.

*Frequency of Response:* On occasion/annually.

*Total Annual Burden:* 17,300 Hours.

**2. Title: Recordkeeping Requirements for Securities Transactions—12 CFR 12**

*OMB Number:* 1557–0142.

*Form Number:* None.

*Abstract:* This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

Under 12 U.S.C. 92a, the OCC is granted supervisory responsibility for national bank trust activities and, under 12 U.S.C. 24 (Seventh), has general authority relating to securities activities. Further, under 12 U.S.C. 93a, the OCC has authority to prescribe rules and regulations to carry out its responsibilities. The requirements in part 12 are necessary for the OCC to effectively carry out its statutory responsibilities.

The requirements in 12 CFR part 12 are located as follows:

*Recordkeeping requirements:* 12 CFR 12.3(a).

*Notification of transaction to customer:* 12 CFR 12.4.

*Notification by agreement:* 12 CFR 12.5(a), (b), (c), and (e).

*Securities trading policies:* 12 CFR 12.7(a).

*Report by bank officers and employees:* 12 CFR 12.7(a) and (b).

*Waiver request.* 12 CFR 12.8.

The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure bank compliance with banking and securities law and regulations. The OCC uses the required information in its examinations to, among other things, evaluate the bank's compliance with the antifraud provisions of the Federal securities laws.

Below are the OCC's current estimates of the paperwork attributable to 12 CFR part 12. These estimates were prepared pursuant to the notice and comment rulemaking process undertaken in 1995 and were approved by OMB in February 1996.

*Type of Review:* Extension, without change, of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 1,047.

*Total Annual Responses:* 1,047.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 56,019 Hours.

**3. Title: Community Development Corporation and Project Investments and Other Public Welfare Investments—12 CFR 24**

*OMB Number:* 1557–0194.

*Form Number:* None.

*Abstract:* This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation. Twelve U.S.C. 24 (Eleventh) authorizes national banks to make investments that are designated primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities (such as through the provision of housing, services, or jobs) consistent with safe and sound banking practices. The statute requires the OCC to limit a national bank's investment in any one project as well as its aggregate investment in such projects. This regulation requires national banks to make occasional filings to the OCC regarding investment proposals, certain self-certifications, and requests from 3-rated banks to self-certify.

The requirements in 12 CFR part 24 are located as follows:

*Investment proposals:* 12 CFR 24.4(a) and 24.5(b).

*Self-certification letters:* 12 CFR 24.5(a).

*Letters from 3-rated banks requesting to self-certify:* 12 CFR 24.5(a)(4).

The OCC uses the information to determine whether the investment meets the statutory requirements, is likely to impact bank profitability or safety and soundness, or poses a risk to the deposit insurance system. Further, the OCC uses the information in planning bank examinations.

Below are the OCC's current estimates of the paperwork attributable to 12 CFR part 24. These estimates were prepared pursuant to the notice and comment rulemaking process undertaken in 1995 and were approved by OMB in February 1996.

*Type of Review:* Extension, without change, of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 400.

*Total Annual Responses:* 400.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 418 Hours.

**COMMENTS:** Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 10, 1999.

**Mark Tenhundfeld,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. 99–3891 Filed 2–17–99; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–209106–89]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209106–89, Changes With Respect to Prizes and Awards and Employee Achievement Awards (§ 1.74–1(c)).

**DATES:** Written comments should be received on or before April 19, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Changes With Respect to Prizes and Awards and Employee Achievement Awards.

*OMB Number:* 1545–1100.

*Regulation Project Number:* REG–209106–89 (formerly EE–84–89).

*Abstract:* This regulation requires recipients of prizes and awards to maintain records to determine whether a qualifying designation has been made in accordance with section 74(b)(3) of the Internal Revenue Code. The affected public are prize and award recipients who seek to exclude the cost of a qualifying prize or award.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 5,100.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99–4007 Filed 2–17–99; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–4–96]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–4–96 (TD 8743), Sale of Residence From Qualified Personal Residence Trust (§ 25.2702–5).

**DATES:** Written comments should be received on or before April 19, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Sale of Residence From Qualified Personal Residence Trust.

*OMB Number:* 1545–1485.

*Regulation Project Number:* PS–4–96.

*Abstract:* Internal Revenue Code section 2702(a)(3) provides special favorable valuation rules for valuing the gift of a personal residence trust. Regulation section 25.2702–5(a)(2) provides that if the trust fails to comply with the requirements contained in the regulations, the trust will be treated as complying if a statement is attached to the gift tax return reporting the gift stating that a proceeding has been commenced to reform the instrument to comply with the requirements of the regulations.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 3 hours, 6 minutes.

*Estimated Total Annual Burden Hours:* 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99–4008 Filed 2–17–99; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[LR–218–78]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–218–78 (TD 8096), Product Liability Losses and Accumulations for Product Liability Losses (§ 1.172–13).

**DATES:** Written comments should be received on or before April 19, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Product Liability Losses and Accumulations for Product Liability Losses.

*OMB Number:* 1545–0863.

*Regulation Project Number:* LR–218–78.

*Abstract:* Generally, a taxpayer who sustains a product liability loss must carry the loss back 10 years. However, a taxpayer may elect to have such loss treated as a regular net operating loss under section 172. The election is made by attaching a statement to the tax return. This statement will enable the IRS to monitor compliance with the statutory requirements.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,500.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99–4009 Filed 2–17–99; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[PS–39–89]**

### Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense (§ 1.469–7(f)).

**DATES:** Written comments should be received on or before April 19, 1999 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense.

*OMB Number:* 1545–1244.

*Regulation Project Number:* PS–39–89.

*Abstract:* Section 1.469–7(f)(1) of this regulation permits entities to elect to avoid application of the regulation in the event the passthrough entity chooses to not have the income from lending transactions with owners of interests in the entity recharacterized as passive activity gross income. The IRS will use this information to determine whether the entity has made a proper timely election and to determine that taxpayers are complying with the election in the taxable year of the election and subsequent taxable years.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 10, 1999.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 99–4010 Filed 2–17–99; 8:45 am]

BILLING CODE 4830–01–U

# Corrections

**Federal Register**

Vol. 64, No. 32

Thursday, February 18, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40839; File No. SR–CHX–98–32]**

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Mandatory Year 2000 Testing

*Correction*

In notice document 99–306, beginning on page 1046, in the issue of Thursday, January 7, 1999, the File No. is corrected to read as set forth above.

[FR Doc. C9–306 Filed 2–17–99; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98-ACE-54]**

### Proposed Amendment to Class E Airspace; Alliance, NE

*Correction*

In proposed rule document 98–34775, beginning on page 60, in the issue of Monday, January 4, 1999, make the following correction(s):

**§ 71.1 [Corrected]**

1. On page 61, in the second column, under the heading **ACE NE E2 Alliance, NE**, in the fifth line, after ''Alliance'' add ''NDB''.

2. On page 61, in the second column, under the heading **ACE NE E5 Alliance, NE** , in the sixth line, ''(Lat. 42°02′35″N., long. 102°47′48″W.)'' should read ''(Lat. 42°02′35″N., long. 102°47′58″W.)''.

[FR Doc. C8–34775 Filed 2-17-99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday
February 18, 1999

Part II

# Department of Housing and Urban Development

**24 CFR Part 903**
**Public Housing Agency Plans; Interim Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 903**

**[Docket No. FR–4420–I–01]**

**RIN 2577–AB89**

## Public Housing Agency Plans

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule implements an important new component of public housing and tenant-based assistance operations—the public housing agency plans. Through these plans—a 5-year plan and an annual plan—a public housing agency (PHA) will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. The public housing agency plans constitute one of several public housing reforms made by the Quality Housing and Work Responsibility Act of 1998. This rule establishes initial procedures and requirements for development, submission and implementation of the plans.

**DATES:** Effective Date: March 22, 1999.

*Comment Due Date:* April 19, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Rod Solomon, Senior Director for Policy and Legislation, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0730 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. This Rulemaking

Section 511 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) requires that not later than 120 days after the date of enactment of the QHWRA HUD shall issue an interim rule to require the submission of an interim public housing agency plan. This interim rule is issued in accordance with section 511.

Section 511, which added section 5A to the United States Housing Act of 1937 (USHA), (42 U.S.C. 1437 *et seq.*) also requires that before the final rule is issued, HUD will seek the recommendations on implementation of the public housing plans from organizations representing (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. Section 511 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations.

In addition to the general solicitation of public comments on this interim rule, HUD specifically seeks through this rulemaking recommendations on implementation of the public housing agency plans from the three groups mentioned above: (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. HUD believes that other appropriate parties should include representatives of affected communities. HUD will notify the public of the dates, times and locations of the public forums. HUD therefore expects that this rule will be clarified and improved as the rulemaking process progresses.

With the publication of this rule, however, PHAs should begin preparing their plans for Fiscal Year 2000 (PHA fiscal years commencing January 1, 2000 and thereafter).

### II. Background

*A. The Need for and Benefits of Comprehensive Planning by PHAs*

The recently enacted QHWRA makes important changes to the operations and programs of public housing and tenant-based assistance. These changes are designed to revitalize and improve HUD's public housing and tenant-based assistance programs. One of the most important changes made by the QHWRA is the introduction of the public housing agency plans—a 5-year plan and an annual plan. The 5-year plan describes the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the subsequent 5 years. The annual plan provides details about the PHA's immediate operations, program participants, programs and services, and the PHA's strategy for handling operational concerns, residents' concerns and needs, programs and services for the upcoming fiscal year. Both planning mechanisms (the 5-year plan and the annual plan) require PHAs to examine their existing operations and needs, and to design long-range and short-range strategies to address those needs. Through this planning mechanism, PHAs will make more efficient use of Federal assistance, more effectively operate their programs, and better serve their residents.

Secretary Andrew Cuomo has long believed that greater efficiency and effectiveness in the use of HUD assistance can be achieved by HUD program participants when the participants engage in comprehensive planning activities that allow them to examine the needs of the individuals they serve, consult with interested and affected parties, and design strategies to address those needs. In 1994, Secretary Cuomo, then the Assistant Secretary for Community Planning and Development, established the consolidated plan for community planning and development programs (the ''Consolidated Plan'' was established by final rule published on January 5, 1995, 60 FR 1878). The Consolidated Plan combined the planning, application and reporting requirements of several HUD community planning and development programs. Through the Consolidated Plan, States and localities examine their needs and design their own strategies to address those needs. This planning process includes (1) the involvement of citizen participation in the planning process, (2) the creation of an action plan that provides the basis for the program participant to assess its performance; and (3) the consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions. (Note that the Consolidated Plan includes an Analysis of Impediments to Fair Housing Choice.) The Consolidated Plan establishes renewed partnerships among HUD, State and local governments, public and private agencies, tribal governments, and communities by empowering the entities and individuals to work with one another, to work with HUD field staff, and with other entities, to fashion

creative solutions to community problems.

The public housing agency plans embody, in many respects, the concepts of HUD's Consolidated Plan. Like the Consolidated Plan for CPD Programs, the public housing agency plans provide a planning mechanism by which a PHA can examine its long-range needs and its short-range needs, specifically the needs of the families that it serves, and design both long-term strategies and short-term strategies for addressing those needs. Like the Consolidated Plan, the public housing agency plans involve consultation with affected groups in the development of the plan.

The Consolidated Plan has been a highly successful mechanism for comprehensive planning for community needs. HUD believes that the public housing agency plans also will prove to be a successful mechanism for comprehensive planning for the needs of those served by PHAs.

*B. Increased Flexibility, Local Accountability, Reduction in Submissions*

While the QHWRA contemplates a comprehensive planning process for public housing and tenant-based assistance, and while the elements listed for inclusion in the annual plan are extensive, the purposes of the QHWRA emphasize deregulation, consolidation and flexibility for PHAs. The QHWRA also authorizes HUD to allow submission of streamlined plans by high-performing PHAs and small PHAs that are not designated as troubled. The challenge for HUD and PHAs is how to fulfill these purposes and still assure adequate local accountability by the PHA. HUD's response to this challenge is that PHAs which are permitted to submit streamlined plans must provide a reasonable means by which the public can obtain any basic information that is not included in the plans. For PHAs that are not eligible to submit streamlined plans, HUD has strived in this first rule to keep the plan submission requirements complete but simple. HUD is accepting references to any plan materials that are already in existence and which already have been submitted to HUD rather than require resubmissions of these materials to HUD. HUD, however, also requires that while these materials need not be resubmitted to HUD, PHAs must ensure local availability of the required Plan components to their residents and members of the public.

In addition to moving toward increased flexibility and local accountability, one of the goals of the PHA annual plan is to reduce the number of PHA submissions to HUD. To the extent practicable, the PHA annual plan will eventually consolidate all PHA information that is required to be submitted under existing HUD planning and reporting requirements into one document. The objective is for the PHA annual plan to eventually supersede submission requirements currently imposed on PHAs under various HUD programs. The elimination of all other currently required submissions cannot be accomplished with this interim rule. HUD is working, however, to phase out other submissions and consolidate them as part of the annual plan, and certain submissions will soon be folded into the annual plan submission, as described below.

For example, HUD intends that the planning submissions required under HUD's modernization program will be superseded by this new PHA planning process commencing with modernization funds made available by Congress for Federal Fiscal Year 2000. HUD will issue a separate notice that provides PHAs with more information about how the modernization program submissions are superseded by this new PHA planning process. Another change brought about by the annual plan is in the submissions and approval process for site-based waiting lists. As further discussed below, PHAs will not need prior HUD approval to implement site-based waiting lists, other than the approval provided under the annual plan. Other submissions required of PHAs, for example those required under HUD's Drug Elimination Program, are expected to be folded into the PHA annual plan submission. Existing planning and reporting submissions remain applicable, however, until HUD notifies PHAs (through this interim rule or other means) that they have become part of the PHA annual plan, and HUD establishes the new submission procedures.

In addition to consolidating other required submissions in the PHA annual plan, HUD intends that the new public housing agency planning process, to the extent practicable, will allow for a PHA to plan for all of its program needs based on the PHA's fiscal year. Allowing a PHA to plan for all of its programs based on a PHA's fiscal year will assist PHAs in planning in a comprehensive manner and will expedite the release of public housing funds. As discussed further below, HUD will require the PHA annual plan to be submitted 75 days in advance of a PHA's fiscal year. Since the first PHA fiscal years that will be funded with Federal Fiscal Year (FFY) 2000 funds begin on January 1, 2000, the first PHA annual plan (and 5-Year Plan) will be due 75 days before January 1, 2000. PHA plans will be due thereafter to match the commencement of PHA fiscal years, which are staggered on a quarterly basis. In addition to the benefits to PHAs of this scheduling, receipt of PHA plans on a quarterly schedule will assist HUD with its review process, and allow HUD the opportunity to provide better feedback to a PHA on its plan where such feedback is necessary.

HUD intends for the planning currently required under the modernization program and Drug Elimination Grant Program to be placed on the submission schedule for the PHA plans. Funding for these programs will be provided by formula in the future. The QHWRA requires all capital funds to be distributed by formula. This formula funding is being developed through negotiated rulemaking. The QHWRA allows formula funding for drug elimination funds. (Note that elsewhere in today's **Federal Register**, HUD is publishing an Advance Notice of Proposed Rulemaking on HUD's proposal to provide formula funding for Drug Elimination Program grant funds.) To assure that capital funds are made available to PHAs in a timely fashion, PHAs that are scheduled to submit PHA plans in the second half of the Federal Fiscal Year (i.e., in April and July) may receive access to funds midway through the Federal Fiscal Year for which funds are being distributed. PHAs may receive access to these funds as long as they have submitted as part of the previous year's Annual Plan a multi-year capital plan covering activities to be undertaken in the coming year. To accommodate the expedited schedule for release of capital funds, once the new capital formula is established, HUD expects to determine formula shares based on formula characteristics of a PHA 90 days earlier than has been the case in the past (June 30 rather than September 30 of the preceding fiscal year).

In addition to moving toward a reduction in administrative burden through the consolidation of PHA required submissions in the PHA plan, HUD, as part of the HUD 2020 Management Reform effort, is moving toward electronic reporting for all required submissions under its programs. HUD is aware that automated systems are being used more and more extensively nationwide, including more extensive use by PHAs and other entities that participate in HUD programs. Vice President Gore's Report of the National Performance Review has,

as a stated objective, the expanded use of new technologies and telecommunications to create an electronic government (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Reg. 2) To meet the Vice President's objective and HUD's own objective to keep in step with modern technology, HUD already has converted several required reporting submissions in both its public housing programs and in its multifamily programs to electronic submission. In addition to making submissions easier for its program participants (paper reduction), electronic data assists HUD and its program partners to exchange information more easily and to monitor activity, note trends in programs and the performance of the program participants (weaknesses and strengths) and better serve the families and communities that HUD programs are designed to serve.

HUD specifically invites comments from PHAs on suggestions to streamline or merge current information requirements already reported electronically to HUD with the additional requirements listed in this rule.

For these two new plans required by QHWRA, HUD is developing as expeditiously as possible software that will allow for, and eventually require, electronic submission of the PHA annual plan and 5-year plan. This software will not be solely directed at facilitating electronic submissions, through the internet or other means, but is anticipated to provide recommended uniform formats and layouts for the submission of information required by the 5-year plan and annual plan. The uniformity of formats should make for easier reading by HUD, the PHAs, and most importantly the public housing residents and the public, generally. Until this software is developed and ready for use, PHAs should follow the guidance for submission of plan information as provided in this rule and through any additional guidance documents that HUD may issue.

As stated earlier, HUD's objective is that the planning process contemplated by this new statutory requirement to develop Annual Plans and 5-Year Plans will prove to be as successful a planning mechanism as the Consolidated Plan. In this regard, HUD specifically solicits comments from PHAs on the feasibility and importance of additional steps to coordinate the 5-Year Plan and/or Annual Plan with the submission of the Consolidated Plan either in whole or in part.

## III. The Public Housing Agency Plans

Section 511 of the QHWRA provides for two types of plans to be submitted by a PHA—a long range 5-year plan (5-Year Plan) that describes the mission of the PHA and the PHA's goals and objectives for achieving its mission over the next 5 years, and an annual plan (Annual Plan) that provides more details about the PHA's current policies, operations, programs and services.

As will be discussed further below, one of HUD's primary goals for public housing and tenant-based assistance is ensuring compliance with all applicable nondiscrimination requirements, such as the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1937, and title II of the Americans with Disabilities Act, as well as affirmatively furthering fair housing. This goal remains and is more clearly specified by the QHWRA's PHA plan requirements as well as by other amendments made by the QHWRA to the USHA.

### *A. The 5-Year Plan*

1. What the QHWRA Requires

Section 511 of the QHWRA requires that a PHA must submit to HUD a 5-year plan that provides a statement of:

—The PHA's mission for serving the needs of low-income and very low-income families in the PHA's jurisdiction during the next 5 fiscal years; and

—The PHA's goals and objectives that will enable the PHA to serve the needs of the low-income and very low-income families as identified by the PHA for the next 5 fiscal years.

Section 511 provides that the 5-Year Plan must cover a period of 5 PHA fiscal years that follow the date that the PHA submits its 5-Year Plan to HUD. For example, if a PHA's fiscal year runs January 1st to December 31st, the due date for the submissions of the plans by the PHA is no later than 75 days before January 1st. For a PHA with a fiscal year beginning January 1st, the 5 years covered by the 5-Year Plan will be the 5 fiscal years beginning January 1, 2000, January 1, 2001, January 1, 2002, January 1, 2003, and January 1, 2004.

The first 5-Year Plan will be due at the same time as the first PHA Annual Plan. Subsequent 5-Year Plans will be due to HUD once every 5 years. PHAs will not be required to submit an annual update to the 5-Year Plan, but PHAs will be required to explain any substantial deviations from the 5-Year Plan in their Annual Plans. After submission of the first 5-Year Plan, PHAs in their succeeding 5-Year Plans, in addition to addressing their mission, goals and objectives for the next 5 years, must address the progress made by the PHA in meeting its goals and objectives described in the previous 5-Year Plan.

With respect to substantial deviations, HUD believes that this refers to a change in a PHA's mission or change in a goal or objective to meet that mission. HUD specifically solicits comment on how ''substantial deviations'' should be defined.

2. An Acceptable 5-Year Plan

In reviewing a PHA's 5-Year Plans, HUD believes that a PHA's mission, goals and objectives should be consistent with and contribute to HUD's mission and goals and objectives, which also overlay almost all HUD programs. HUD's mission is to promote adequate and affordable housing, economic opportunity, and a suitable living environment without discrimination. HUD's strategic goals that are applicable to PHAs are (1) increasing the availability of decent, safe and affordable housing in American communities; (2) ensuring equal opportunity in housing for all Americans; (3) promoting self-sufficiency and asset development of families and individuals; and (4) improving community quality of life and economic vitality.

In establishing goals and objectives, PHAs must set quantifiable ones, where possible. For example, a goal of providing decent, safe and sanitary housing can be measured partly by a PHA's physical inspection score under the Public Housing Assessment System. The goal of promoting economic self-sufficiency can be measured by PHA residents that no longer require assistance because of welfare-to-work or similar initiatives. Additional examples of quantifiable measures and more information on HUD's mission, goals and objectives can be found in HUD Fiscal Year 2000 Annual Performance Plan, located at HUD's web site (http//www.hud.gov).

HUD specifically seeks comments on what constitutes an acceptable 5-Year Plan.

### *B. The Annual Plan Pertaining to Section 8 Assistance, Capital Funds, and Annual Contributions for Operation of Lower Income Housing Projects*

The second plan required by Section 511 of the QHWRA is an Annual Plan that the PHA must submit for each year for which the PHA receives assistance under section 8(o) or section 9 of the USHA. Section 511 provides for 18 components of the Annual Plan. The content of each component and HUD's

permitted form of submission of each component is discussed in Section IV of this preamble, which follows.

## IV. The Annual Plan

*A. Statutory Contents of the Annual Plan, Generally, and HUD Guidance on Submissions*

Section 511 specifies the information that must be included in the Annual Plan for the fiscal year for which the PHA receives assistance under section 8(o) or section 9 of the USHA. The statutory components of the Annual Plan are fully provided in the regulatory text of this interim rule. This section of the preamble does not repeat the complete statutory language or the regulatory text language, but rather provides a brief summary of the statutorily required contents for each component. Therefore, it is important for the reader to review the regulatory text, as well as this preamble, for a full description of what is required for the Annual Plan. It is also important for the reader to note that the information that the PHA must submit for HUD approval under the Annual Plan are the discretionary policies of the various plan components or elements (for example, selection policies) and not the statutory or regulatory requirements that govern these components.

This section of the preamble also includes HUD guidance on how the information for Annual Plan components may be compiled and submitted. HUD guidance includes using or referencing materials that PHAs already may have compiled or are in the process of compiling under current program planning and reporting requirements. Where these materials are used or referenced, the PHA must clearly identify the source of the materials, and must clearly identify for the public where these materials can be obtained or inspected. The submission guidance provided in this rulemaking is primarily for the first Annual Plan submission or at most for the first two years. HUD anticipates that the comments submitted on this rule, and the recommendations made at the public forums, will assist HUD in developing more long-term guidance on submissions to be made under the Annual Plan. At the final rule stage or in a future rulemaking, HUD may not only provide guidance but may prescribe the information that must be submitted to satisfy the statutory and regulatory requirements and may prescribe the format of submission. Before taking this action, HUD wants the benefit of public comment and the recommendations from the three groups identified in section 511 of the QHWRA.

HUD specifically invites comment on the manner of submission of the information required under the Annual Plan.

For those components of the Annual Plan for which the PHA has no submission (for example, if the PHA has no projects targeted for demolition or disposition), the PHA must state in its Annual Plan the reason that this component is not addressed (again, in the example provided, a simple statement that no projects are targeted for demolition/disposition). Each component of the Annual Plan that is required to be addressed must be addressed in some fashion. Additionally, HUD points out that certain PHA activities, such as demolition, disposition, conversion to vouchers, designation, and public housing homeownership programs, have separate submission and approval processes as well as specific HUD review and approval periods. These processes remain in place and are not superseded by the Annual Plan. As noted earlier, however, PHAs may submit relevant approval documents and other materials relating to these separate processes along with the Annual Plan if these materials are clearly identified as being part of one of these separate processes.

In providing an overview of the statutory components of the Annual Plan as well as HUD's submission guidance in this section of the preamble, the reader should note that the components of the Annual Plan apply to both public housing and Section 8 tenant-based assistance, except where specifically stated otherwise.

1. *Housing Needs. What the QHWRA Requires.* A statement of the housing needs of the low-income and very-low income families (including elderly families and families with disabilities) in the jurisdiction served by the PHA and on the PHA's waiting list.

HUD notes that it has specified two categories of families—extremely low-income families (i.e., families with incomes below 30 percent of the area median) and households of various races and ethnic groups—within categories of families listed by the QHWRA. (Please see § 903.7(a)(1) of regulatory text.) HUD added the extremely low-income family category because (1) the needs of extremely low-income families are specifically addressed in the local consolidated plans with which PHA plans (5-Year and Annual) must be in compliance; and (2) the QHWRA targets housing assistance to extremely low-income families. HUD added the breakdown by racial and ethic groups because such breakdown is consistent with a PHA's civil rights obligations under section 511.

*Submission Guidance.* PHAs may obtain this information from the Consolidated Plan for their jurisdiction if the Consolidated Plan accurately describes their housing needs. Rather than restate the Consolidated Plan's housing needs statement, the PHA may submit any applicable portions of the Consolidated Plan. The information about needs of families on waiting lists must of course come from the PHA's analysis of the waiting list.

PHAs which are not in a city or county with its own Consolidated Plan may include in their submissions any applicable portions of the Consolidated Plan for the State. PHAs whose jurisdictions encompass more than one Consolidated Plan jurisdiction may include portions of all applicable Consolidated Plans. These PHAs also will need to examine their waiting lists to specify the housing needs arising from families on the waiting list.

Whether or not a PHA includes an applicable portion of a Consolidated Plan for this component of the Annual Plan, the PHA's statement of housing needs must be consistent with the needs described in the Consolidated Plan for the jurisdictions served by the PHA. The statute requires consistency with the Consolidated Plan.

2. *Financial Resources. What the QHWRA Requires.* A statement of the financial resources available to the PHA and the planned uses of those resources.

*Submission Guidance.* PHAs should provide a statement of: (a) The estimated financial resources available for the support of the Federal public housing and tenant-based assistance programs administered by the PHA during the plan year; and (b) the planned use of available resources in support of these programs. The statement of resources available should include the sources of funds supporting each federal program, including current federal grants, prior year grant funds, dwelling rental income, any other sources of non-grant income (including donations, leveraged funds, entrepreneurial, program, or investment income), and reserves. The planned uses of these resources should be displayed by major category of activity including: public housing operations, public housing modernization and/or development, section 8 payments to owners, anti-crime and security activities; services to assisted families; and program administration.

3. *Policies Governing Eligibility, Selection, Admissions. What the QHWRA Requires.* A statement of: (a) the PHA's policies governing eligibility, selection and admission (including any admission preferences), assignment, and occupancy policies with respect to public housing and Section 8 tenant-based assistance, as applicable, and (b) procedures for maintaining waiting lists, including the public housing admissions policy for deconcentration of lower-income families and any public housing site-based waiting list procedures.

*Submission Guidance.* PHA admissions policies, occupancy policies, and waiting lists policies are currently required by existing regulations and the requirements to adopt and maintain these policies have not been repealed. With respect to the information required by this component of the Annual Plan, PHAs need not submit these policies with their Annual Plan if they already have been submitted and approved by HUD (for example, the Tenant Selection and Assignment Plan). In this case, however, PHAs must identify in the Annual Plan the policies that have been submitted and approved. Additionally, if there have been any changes or additions to these policies since HUD approval of these policies, the PHA must submit the changes or additions. Where the changed or additional policies are contained in existing PHA documents, the PHA may excerpt and include relevant portions of those documents as part of this component. For tenant-based assistance, PHAs must include those applicable portions of the Section 8 Administrative Plan. Please see discussion in Section IV.C of this preamble for submission guidance regarding admissions policies related to deconcentration of poverty and site-based waiting lists.

*Applicability.* The policies governing eligibility, selection and admissions and waiting list administration is applicable to public housing and tenant-based assistance, except for the information requested on site-based waiting lists and deconcentration. This information is applicable only to public housing.

4. *Rent Determination. What the QHWRA Requires.* A statement of the discretionary policies of the PHA that govern rents charged for public housing units, including flat rents, and rental contributions of families assisted under section 8(o) of the USHA.

*Submission Guidance.* For this component of the Annual Plan, PHAs should submit the listing of minimum rents, flat rents and any discretionary rent policies not mandated by statute. For tenant-based assistance, PHAs should submit minimum rent and payment standard policies.

5. *Operation and Management. What the QHWRA Requires.* A statement of the PHA's rules, standards, and policies governing maintenance and management of the housing owned, assisted, or operated by the PHA, and management of the agency and programs of the agency.

*Submission Guidance.* PHAs should submit a list of their basic rules, standards and policies governing maintenance and management of public housing, and management of the PHA and the programs administered by the PHA. PHAs also should identify where the rules, standards and policies are maintained and may be reviewed, specifically including measures necessary for the prevention or eradication of pest infestation. With respect to tenant-based assistance programs, PHAs should list the programs, the number of households assisted, and the estimated number of units becoming available annually.

*Applicability.* The list of PHA rules, standards and policies regarding management and maintenance of housing applies only to public housing. Information about PHA management, standards and policies, and the programs administered by the agency, however, applies to public housing and tenant-based assistance.

6. *Grievance Procedures. What the QHWRA Requires.* A statement of the grievance procedures that the PHA makes available to their residents.

*Submission Guidance.* PHA grievance procedures and informal review and hearing procedures for tenant-based assistance are currently required by existing regulations and the regulatory requirements to provide these policies have not been repealed. Submission of these procedures (including any procedures affecting public housing and tenant-based assistance applicants) satisfies this component of the Annual Plan.

7. *Capital Improvements. What the QHWRA Requires.* With respect to public housing projects owned, assisted, or operated by the PHA, the PHA's plan describing the capital improvements necessary to ensure long-term physical and social viability of the projects.

*Submission Guidance.* PHAs should submit a list of its capital projects and the estimates of costs. Alternatively, in at least the first year of implementation, an update of the Comprehensive Grant Plan forms will satisfy this component of the Annual Plan. With respect to the capital improvement plans, PHAs may submit 5-Year Plans and update them annually. This is good management practice and this will allow PHAs to have HUD-approved spending items for future years, as is the case now under the annual statements for the Comprehensive Grant Program.

*Applicability.* This section is applicable only to public housing.

8. *Demolition and/or Disposition. What the QHWRA Requires.* A description of any public housing project owned by the PHA for which the PHA will apply for demolition and/or disposition approval and the timetable for demolition and/or disposition.

*Submission Guidance.* PHAs that already have submitted or have prepared demolition or disposition requests in accordance with the applicable law, regulations or notices may submit these requests, if not already submitted, or may reference a request already submitted. If already submitted, the PHA should advise of the date of submission. If no request has been prepared or submitted, the PHA should identify any project or portion of a project targeted for demolition/disposition and the PHA's estimated timetable for this activity. The description of targeted demolition/disposition in the Annual Plan should include the timetable for submission of the demolition/disposition application.

*Applicability.* This section is applicable only to public housing.

9. *Designation of Public Housing for Elderly Families or Families with Disabilities or Elderly Families and Families with Disabilities. What the QHWRA Requires.* Identification of any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated, or plans to designate, for occupancy only by elderly families, or only by families with disabilities, or for elderly families and families with disabilities.

*Submission Guidance.* The option to designate public housing for elderly families, or families with disabilities, or for elderly families and families with disabilities was authorized by section 622(a) of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992, 106 Stat. 3672, 3813), which amended section 7 of the USHA. Section 7 was amended a second time by section 10 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, approved March 28, 1996), and this more recent statute establishes the current requirements for designation. These requirements are provided in PIH Notice 98–24.

For this component of the Annual Plan, the PHA should follow the same

submission procedure allowed for the demolition/disposition component of the Annual Plan. PHAs that already have submitted or have prepared designation plans in accordance with current HUD procedures, may submit their designations plans, if not already submitted, or may reference a plan already submitted. If a designation plan already has been submitted, the PHA should advise of the date of submission. If no designation plan has been prepared or submitted, the PHA should identify any project or portion of a project targeted for designation and the PHA's estimated timetable for this activity.

*Applicability.* This section is only applicable to public housing.

10. *Conversion of Public Housing. What the QHWRA Requires.* A description of any building or buildings that the PHA is required to convert, or voluntarily plans to convert to tenant-based assistance, and both an analysis of the projects or buildings required to be converted and a statement of the amount of assistance received that is to be used for rental assistance or other housing assistance in connection with the conversion.

*Submission Guidance.* HUD will be issuing a rule in the near future on voluntary conversions. Until that rule has been issued for effect, PHAs are not required to address the subject of voluntary conversions. For mandatory conversions, until a rule is issued on changes under the QHWRA, PHAs should submit a list of projects or portions of projects identified by the PHA or HUD as covered by section 202 of the FY 1996 HUD Appropriations Act (42 U.S.C. 14371 note) and the status of such projects or portions of projects covered by section 202.

*Applicability.* This section is applicable to public housing and only that tenant-based assistance which is to be included in a conversion plan.

11. *Homeownership. What the QHWRA Requires.* A description of any homeownership programs administered by the PHA under section 8(y) of the USHA, or any homeownership programs for which the PHA has applied or will apply to administer under new section 32 of the USHA (added by section 536 of the QHWRA), once that section is implemented.

*Submission Guidance.* PHAs should describe any homeownership programs previously approved or proposed for approval under the Public Housing 5(h) Ownership program, or the HOPE I Homeownership Program, or section 32, or which they will administer under the section 8(y) voucher homeownership program and should describe the basic elements of these homeownership programs.

12. *Community Service and Self-Sufficiency. What the QHWRA Requires.* A description of any community service and self-sufficiency programs of the PHA, any policies or programs for the enhancement of economic and social self-sufficiency of assisted families, and how the PHA will comply with the requirements of section 12(c) and (d) of the USHA, as added by the QHWRA.

*Submission Guidance.* PHAs should list and briefly describe any programs coordinated, promoted, or provided, including program size and means of allocating assistance to households. This includes any activities under programs such as Family Self-Sufficiency (including required and actual program size), Section 3 (Section 3 of the Housing and Urban Development Act of 1968), activities funded by HUD under the Economic Development Supportive Services Program (EDSS) and other similar programs. In addition, PHAs must address how they will comply with section 12(d) of the USHA which addresses treatment of income changes resulting from welfare program requirements. Until rulemaking is completed for section 12(c) the USHA (which relates to community service), PHAs are not required to address this aspect of the community service and self-sufficiency component.

*Applicability.* This section is applicable to both public housing and tenant-based assistance except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

13. *Safety and Crime Prevention. What the QHWRA Requires.* The PHA's plan for safety and crime prevention to ensure the safety of the residents that it serves, that is developed in consultation with local law enforcement.

*Submission Guidance.* For this component, PHAs may describe any plans or measures directed toward safety and crime prevention of a PHA's residents as required by the QHWRA, and include any materials required to be included for participation in the Public Housing Drug Elimination Program (once new regulations for the program are issued). Please see Section IV.F. of this preamble for further discussion about forthcoming HUD regulations to implement section 586 of the QHWRA which makes changes to HUD's Public Housing Drug Elimination Program.

*Applicability.* This section only applies to public housing.

14. *Ownership of Pets in Public Housing. What the QHWRA Requires.* A statement of the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the USHA.

*Submission Guidance.* HUD's regulations in 24 CFR part 5, subpart C, specify the current statutory requirements governing household pets in public and assisted housing for elderly families and families with disabilities, and allow PHAs to establish rules governing the keeping of household pets in these projects. The existing statute and regulations, however, are limited to projects for elderly families and families with disabilities. Additionally, the existing regulations are not applicable to animals that are used to assist persons with disabilities.

Section 526 of the QHWRA amends the USHA to add a new section 31 that provides conditions for ownership of household pets in public housing projects other than those for elderly families and families with disabilities. Section 526, however, requires HUD to implement this new section through proposed and final rulemaking. Until HUD issues these new regulations for effect, PHAs are not required to submit this component of the Annual Plan.

*Applicability.* This section only applies to public housing.

15. *Civil Rights Certification. What the QHWRA requires.* A certification by the PHA that it will carry out its plan in conformity with all applicable civil rights requirements and will affirmatively further fair housing.

*Submission Guidance.* The civil rights certification of the QHWRA is a critical component of the Annual Plan and must be submitted. The certification is twofold: that the PHA will carry out its plan in compliance with all applicable civil rights requirements and that the PHA will affirmatively further fair housing. Additionally, the certification is not only applicable to a PHA's Annual Plan but also to its 5-Year Plan.

16. *Most Recent Fiscal Year Audit. What the QHWRA Requires.* The results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the USHA.

*Submission Guidance.* This information will be obtained by HUD's Real Estate Assessment Center (REAC) beginning June 30, 2000 (for PHAs with fiscal years ending September 30, 1999 and after) through its financial assessment subsystem (FASS). For audits prior to June 30, 2000, HUD Field Offices will either have a copy of a PHA's most recent audit, or will obtain a copy from the OMB Clearinghouse. Accordingly, since this information is

already in HUD's possession, PHAs are not required to make a separate submission of this component of the Annual Plan. As with any other Annual Plan component for which information is in the possession of the PHA (as well as HUD) but which is not required to be submitted to HUD as part of the Annual Plan, PHAs must provide a reasonable means by which the public may obtain or review this information.

17. *Asset Management. What the QHWRA Requires.* A statement of how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition and other needs for such inventory. This statement also should address the PHA's strategy for managing its assets with respect to tenant-based assistance.

*Submission Guidance.* PHAs should submit a general statement explaining how they will deploy physical, financial and other assets to fulfill their mission, goals and objectives, to the extent that this information is not already addressed in other components of the Annual or 5-Year Plan.

18. *Other Information—Table of Contents, Executive Summary and Progress Report.* The QHWRA authorizes HUD to require submission of any other relevant information. The rule provides for three specific submissions.

First, a table of contents that corresponds to the Annual Plan's components in the order listed in the rule must be submitted. The table of contents also must identify the location of any materials that are not being submitted with the Annual Plan (for example, if REAC has the financial information required, the table of contents would note this and the date submitted to REAC.)

Second, an executive summary must be submitted which provides a brief overview of the information that the PHA is submitting in its Annual Plan and relates the Annual Plan programs and activities to the PHA's mission and the goals, as described in the 5-Year Plan. The executive summary also must explain any substantial deviation of these activities from the 5-Year Plan.

Third, for all Annual Plans following submission of the first Annual Plan, a brief summary must be included of the PHA's progress in meeting the mission and goals described in the 5-Year Plan.

HUD specifically solicits comments on these items that HUD has added to the Annual Plan submission and seeks recommendations on any other items that should be included.

*B. What Constitute Acceptable Plans*

An acceptable and approvable Annual Plan or 5-Year Plan is one that addresses all subjects required to be addressed by the statute and regulations, and contains all required information and meets the applicable statutory and regulatory requirements. Failure to submit a plan by the deadline, failure to submit information required by the plan, or failure of the information provided to meet the Plan requirements may result in HUD's disapproval of plan, in whole or in part, and may result in action by HUD that it determines to be an appropriate response to the PHA's failure to submit the plan or information required by the plan. This action may include withholding of funding.

*C. Certain Components of the Admissions Policy Submission*

1. Deconcentration of Poverty and Income-Mixing in Public Housing

Section 513 of the QHWRA makes several amendments to section 16 with respect to deconcentration of poverty and income targeting, effective immediately. HUD's Notice of Initial Guidance on the QHWRA, published elsewhere in today's **Federal Register**, and which addresses those provisions of the QHWRA which are effective immediately, provides further guidance on the initial requirements for the new deconcentration provisions.

The Annual Plan's required submission on the PHA's policies governing eligibility, selection and admissions includes the PHA's description of its admissions policy. This admissions policy must be designed to provide for deconcentration of poverty and income-mixing by bringing higher income tenants into lower income projects and lower income tenants into higher income projects.

A PHA may offer incentives to eligible families that would help accomplish the deconcentration and income-mixing objectives. In addition, skipping of a family on a waiting list specifically to reach another family with a lower or higher income is permissible, provided that such skipping is uniformly applied. Skipping families is consistent with site-based waiting lists. Such skipping must be adopted by a PHA if necessary to implement an admissions policy that effectively meets the statute's requirements. Admissions policies relating to deconcentration do not impose specific quotas. In adopting deconcentration and income-targeting provisions, Congress recognized that significant income disparities may occur both in the income levels of public housing developments and in the income levels of the neighborhoods in which the public housing developments are located (income levels for neighborhoods are approximate income levels based on census tract information).

To effectively develop an admissions policy that encourages deconcentration of poverty and income-mixing, PHAs should analyze expeditiously their public housing stock and tenant incomes. PHAs must: (1) determine and compare the relative tenant incomes of each development and the incomes of census tracts in which the developments are located, and (2) consider what policies, measures or incentives are necessary to bring higher income families into lower income developments (or, if appropriate to achieve the deconcentration of poverty, into developments in lower income census tracts) and lower-income families into higher-income projects (or if appropriate to achieve the deconcentration of poverty, into developments in higher income census tracts). PHA policies must devote appropriate attention to both of these goals.

PHAs may consider a number of approaches as they examine designing an admissions policy to achieve the goals of deconcentration and income-mixing, such as the use of skipping over certain families on waiting lists based on incomes; the establishment of certain preferences such as worker preferences; appropriate affirmative marketing efforts; additional applicant consultation and information; provision of additional supportive services and amenities; and rent incentives authorized by the QHWRA. PHAs with relatively few units or projects should comply with deconcentration and income-mixing requirements by adopting any necessary changes in their admissions policies based on their circumstances, taking into account current tenant populations, applicant populations and housing resources. Of course, PHA policies must be in writing and followed consistently, and must affirmatively further fair housing. It is not permissible to achieve deconcentration and income-mixing for developments as a whole, but with unacceptable disparities between areas or buildings within developments.

2. Site-Based Waiting Lists

This interim rule implements the QHWRA's authorization for PHAs to adopt and implement site-based waiting

lists under certain conditions (as specified in section 525 of the QHWRA) and the statute's directive that PHAs can do this notwithstanding any law, regulation, notice or handbook to the contrary, except that applicable civil rights laws apply. In addition, the QHWRA states that each applicant shall benefit from full disclosure by the PHA of any options available to the applicant with respect to the selection of developments.

The Senate Committee Report on the QHWRA, which provides, with respect to legislative history, the most detailed statement on site-based waiting lists, cites several of the possible benefits of site-based waiting lists, but also acknowledges that past HUD limitations on site-based waiting lists were based on concern about racial steering and a desire to prevent housing discrimination. The Senate Committee anticipated that PHAs will assure that all applicants are aware of their rights under fair housing and civil rights laws, and encouraged HUD to monitor implementation so that steering does not occur.

HUD interprets this legislative history to mean that PHAs should be allowed to implement site-based waiting lists once PHA Annual Plans proposing site-based lists are approved by HUD, and that every reasonable action should be taken by PHAs to assure that applicants can make informed choices and that the programs are carefully monitored. This interim rule allows for implementation of site-based waiting lists in this fashion and specifies the necessary protections. All PHAs that request a site-based waiting list as part of their PHA Plan admissions policies (including those PHAs presently using site-based waiting lists and which wish to continue to do so) must meet the thresholds described in the regulation. To ensure that a plan proposing a site-based waiting list is consistent with the civil rights laws, regulations and certifications, HUD will determine whether any significant changes in the levels of racial and ethnic composition occur as a result of the implementation of the site-based waiting list, and whether any pattern or practice of discrimination exists.

Some PHAs may wish to implement site-based waiting lists before approval of their initial PHA Annual Plans, as an integral part of the implementation of admissions policies to promote deconcentration of poverty in public housing or to achieve other plan objectives. If so, PHAs may follow current procedures for requesting HUD approval. HUD will take into account the standards established by this interim rule when reviewing any such request for approval.

3. Admissions Policy and Civil Rights Requirements

The QHWRA includes a statutory requirement that PHA annual plans include civil rights certifications and these responsibilities are a fundamental objective of the annual plan. To do so, PHAs should develop admissions policies to achieve greater housing choice and opportunity on a non-discriminatory basis at each of their sites, for both tenants and applicants, and annually conduct the analysis to satisfy the elements of their civil rights certifications.

*D. Additional Plan Information for Troubled PHAs and PHAs at Risk of Being Designated Troubled*

Section 511 of the QHWRA provides that the Secretary may require any additional information in the PHA's Annual Plan that the Secretary determines to be appropriate for each PHA that (1) is at risk of being designated as troubled under section 6(j)(2) of the USHA, or (2) is designated as troubled under section 6(j)(2). To these categories, HUD includes a PHA that is at risk of being designated as troubled or is designated as troubled under HUD's new Public Housing Assessment System (24 CFR part 901).

Certain additional information that is important to the PHA's progress in recovery from troubled status or near-troubled status will be available through HUD's Troubled Agency Recovery Center (TARC). The TARCs, part of the HUD 2020 Management Reform effort, were established to assist PHAs designated as troubled to reach improved performance through the development and implementation of sustainable solutions. The TARC works with a PHA to develop and implement an intervention strategy to help raise the PHA's level of performance. The PHA reports to the TARC and the TARC monitors the PHA's performance. To the extent that HUD can obtain additional information on troubled PHAs through the TARC it will do so to reduce duplication of submissions. HUD, however, retains the authority provided by the QHWRA to request any additional information from a troubled PHA for the PHA Annual Plan that HUD determines is appropriate, and may not be available at the TARC. A troubled PHA must make available locally (to its residents and members of the public) its memorandum of agreement and operating budgets in addition to other materials required by this interim rule. For PHAs at risk of being designated troubled and that are not being monitored by the TARC, HUD may request additional information for the PHA Annual Plan similar to that information which is required of troubled PHAs by the TARC.

*E. Streamlined Annual Plan for Certain PHAs*

Section 511 also provides that the Secretary may establish a streamlined plan for:

—PHAs that are determined to be high performing PHAs;
—PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled under section 6(j)(2) of the USHA; and
—PHAs that only administer tenant-based assistance and that do not own or operate public housing.

In this interim rule, HUD exercises this authority to allow streamlined plans for high performing PHAs, nontroubled small PHAs, and PHAs that only administer Section 8 tenant-based assistance. HUD generally will exempt these categories of PHAs from submitting elements of the Annual Plan which (1) simply reflect good management practice, or compliance with regulatory requirements and therefore not discretionary policies (for example, operation and management practices; grievance procedures); (2) are inapplicable to a PHA's operations (notably with respect to a PHA's administration of Section 8 tenant-based assistance); or (3) require HUD approval before the PHA may take action and also require Board of Commissioners approval (for example, designation plans, public housing homeownership programs, and conversion to vouchers). As noted above, PHAs are urged to fully inform their assistance recipients and the public generally, of PHA policies that exist but are exempt from submission, and must indicate how the public may receive more information about these policies in a reasonable fashion.

*F. Interim Plan for Demolition/ Disposition*

*Interim Plan for Demolition/ Disposition.* Before submission of the first Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition/disposition. The interim plan must provide the required description of the action to be taken, include a certification of consistency with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. If a resident advisory board has not yet been

formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted. The actual application for demolition or disposition could be submitted at the same time or at a later date.

*G. The Resident Advisory Board: Establishment and Consultation*

To assist PHAs in the development of their annual plans, section 511 of the QHWRA provides for the establishment of a Resident Advisory Board. The QHWRA provides that each PHA must establish one or more Resident Advisory Boards, and the membership on the board or boards must adequately reflect and represent the residents assisted by the PHA.

The purpose of the Resident Advisory Board is to assist the PHA and make recommendations regarding the development of the Annual Plan. The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and, in submitting the final plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

HUD specifically will require PHAs to appoint as Resident Advisory Boards jurisdiction-wide resident councils where they exist, or local resident councils, that are in compliance with tenant participation regulations (see 24 CFR part 964). PHAs will be required to encourage tenants that are not represented by such resident councils to seek representation on these councils in accordance with any applicable tenant participation regulations. Section 8 tenant-based assistance recipients also must be represented on resident councils because their interests may be very different from those of public housing residents. Although the QHWRA allows HUD to waive the resident advisory board requirement where current organizations adequately represent residents, HUD's strong preference is that PHAs appoint those organizations as Resident Advisory Boards rather than seek waivers.

*H. Consistency With the Consolidated Plan*

Section 511 of the QHWRA provides that the PHA must ensure that its Annual Plan is consistent with the Consolidated Plan for the jurisdiction in which the PHA is located. PHAs whose jurisdictions encompass more than one Consolidated Plan jurisdiction must ensure consistency with any applicable Consolidated Plans. The Annual Plan must contain a certification by the appropriate State or local officials that the plan is consistent with the Consolidated Plan and provide a description of the manner in which the applicable contents of the Annual Plan are consistent with the Consolidated Plan. This consistency requirement is applicable to both the 5-Year Plan and the Annual Plan.

As part of fulfilling this requirement, the Annual Plan should also be consistent with the local jurisdiction's Analysis of Impediments to Fair Housing Choice (AI), which describes barriers to fair housing choice and opportunity that affect, among others, public housing and Section 8 tenants and applicants, and outlines actions to be taken to address the impediments. Where impediments have been identified relating to the administration of public housing and Section 8 tenant-based assistance programs, the impediments must be addressed in the PHA's Annual Plan, including any appropriate actions to be taken to remove them.

**V. Adoption, Submission, Amendments, and Review of the Plans**

*A. Public Information and Notice About the Plans*

Section 511 of the QHWRA requires the board of directors or similar governing body of the PHA to conduct a public hearing to discuss the PHA plans and to invite public comment regarding the plans. The hearing is to be conducted at a location that is convenient to the residents served by the PHA. Section 511 also requires that not later than 45 days before the public hearing is to take place, the PHA must:

—Make the proposed PHA plan (either the 5-Year Plan or Annual Plan, or both, as applicable) and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

—Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

Where practical, a PHA notice to the public should include electronic posting on the internet. A PHA also should contact all organizations and groups that the PHA believes are interested in the operations, programs and services of the PHA (for example, organizations that the PHA is aware have previously expressed interest) and specifically seek their comments and recommendations on the Annual Plan or 5-Year Plan or both, as applicable.

*B. When 5-Year Plan and/or Annual Plan Are Ready for Submission to HUD*

Section 511 of the QHWRA provides that a PHA may adopt its 5-Year Plan and Annual Plan and submit the plans to HUD only after:

—The PHA has conducted the public hearing;

—The PHA has considered all public comments received on the plans;

—The PHA has made any changes to the plans, based on comments, in consultation with the Resident Advisory Board or other resident organization.

*C. Submission of the 5-Year Plan and Annual Plan to HUD*

Section 511 of the QHWRA provides that the first 5-Year Plan and Annual Plan are to be submitted by the PHA beginning with the PHA fiscal year in which the PHA first will receive Federal fiscal year 2000 funding under sections 8(o) or 9 of the USHA. After the first Annual Plan is submitted, section 511 requires that not later than 75 days before the start of each succeeding fiscal year of the PHA, the PHA shall annually submit to HUD a plan which may be an update, including any amendments or modifications to any previous year's Annual Plan.

*D. Amendments and Modifications to the 5-Year Plan and Annual Plan*

Section 511 of the QHWRA also provides that a PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plans but provides that significant amendments or modifications:

—May not be adopted until the PHA has duly called a meeting of its board of directors (or similar governing body), the meeting is open to the public, and the plan is adopted at the meeting; and

—May not be implemented until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, discussed in Section E below.

With respect to the 5-Year Plan, HUD believes that significant amendments or modifications are those that make a change to the PHA's mission, or the goals and objectives to enable the PHA to meet the needs of the families that it

serves, or both. With respect to the Annual Plan, HUD believes that significant amendments or modifications are those that make significant changes to information provided by the PHA in its Annual Plan. For example, the PHA's housing needs or its strategies for meeting those needs has changed substantially, or the PHA has made substantial changes to its planned use of financial resources.

HUD specifically seeks comments on what should constitute ''significant'' amendments or modifications to either the 5-Year Plan or Annual Plan.

*E. HUD's Review of the 5-Year Plan and Annual Plan, Determination of Compliance and Approval and Disapproval*

*Review of the Plans.* Upon submission by the PHA to HUD of the PHA's plans, and any amendment or modification to the plans, HUD shall review the plans and determine whether the contents of the plan:

—Provide the information that is required to be included;
—Are consistent with the information and data available to HUD and with the Consolidated Plan for the jurisdiction in which the PHA is located; and
—Are not prohibited by or inconsistent with the USHA or any other applicable Federal law.

*Disapproval.* HUD may disapprove a PHA plan (5-Year Plan or Annual Plan), in its entirety or in part, or may disapprove any amendment or modification to the plan, only if HUD determines that the plan, or any amendment or modification to the plan:

—Does not provide all the information that is required to be included in the plan;
—Is not consistent with the information and data available to HUD or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and
—Is not consistent with the USHA or other applicable Federal law.

Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its amendment or modification to the plan, HUD shall issue written notice to the PHA if the plan or any part of the plan has been disapproved. The notice must state with specificity the reasons for the disapproval. If HUD fails to issue the notice of disapproval on or before the 75th day after the PHA submits the plan, HUD shall be considered to have determined that all components of the plan required to be submitted and that were submitted, and reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

*Public Availability of the Approved Plan.* Once a PHA's plan has been approved, a PHA must make its approved plan available for review and inspection, at the principal office of the PHA during normal business hours.

HUD specifically seeks comments on whether the final rule should provide that a PHA must post notice in the developments owned, operated or administered by the PHA that the plan has been approved and information on where the plan may be inspected, and also whether the PHA should post notice in a newspaper of general circulation that the plan has been approved and information about where it may be inspected.

*F. PHA's Compliance With the Plan*

A PHA must comply with the policies, rules, and standards adopted in the plan as approved by HUD. To ensure that a PHA is in compliance with its plan, HUD shall respond appropriately to any complaint concerning PHA noncompliance with its plan. HUD also may be informed of a PHA's compliance with its plan through PHA reports on progress, results of audits, performance evaluation scores and other means. If HUD determines that a PHA is not in compliance with its plan, HUD will take necessary and appropriate action to ensure compliance by the PHA.

*G. The PHA Annual Plan as It Relates to Existing Regulations and the Necessity for Conforming Regulatory Amendments*

HUD also is aware that conforming amendments must be made to existing regulations as a result of the changes made to the USHA by the requirements of the PHA Plans as well as changes made to the USHA by other QHWRA amendments. HUD anticipates making these conforming changes at the final rule stage or through other rulemakings. HUD also may decide that matters now covered by this preamble should be part of the regulatory text. For example, an item that HUD recommended should be submitted in the preamble submission guidance provided for a particular component may be a required submission item at the final rule stage.

With this in mind, HUD specifically welcomes comments on whether various described items in the submission guidance provided should or should not be required submission items at the final rule stage.

**VI. Issues on Which HUD Specifically Seeks Comment**

HUD seeks comments on all aspects of this rulemaking. However, throughout this preamble, HUD has specifically requested comment on certain issues and questions. For the convenience of the reader, the following restates those issues and questions, and adds an additional question on the rule's organization.

1. The feasibility of combining the 5-Year Plan and/or Annual Plan with the submission of the Consolidated Plan either in whole or in part.
2. Ways to streamline or merge current information requirements already reported electronically by PHAs to HUD with the additional requirements listed in this rule.
3. How should the term ''substantial deviation'' be defined.
4. What constitutes an acceptable 5-Year Plan?
5. The manner of submission of the information required under the Annual Plan.
6. HUD's addition of items to the Annual Plan submission and whether commenters recommend any other items for inclusion.
7. What should constitute ''significant'' amendments or modifications to either the 5-Year Plan or Annual Plan?
8. What methods should HUD use to encourage PHAs to utilize metropolitan-wide strategies to increase the success of deconcentration approaches.
9. Whether the final rule should provide that a PHA must post notice in the projects owned, operated or administered by the PHA that the plan has been approved and provide information on where the plan may be inspected, and also whether the PHA should post notice in a newspaper of general circulation that the plan has been approved and information about its availability for review.
10. Whether any items in the submission guidance provided for the Annual Plan should or should not remain required submission items at the final rule stage.
11. Is the rule organized in a manner that is helpful and should the rule include a definition section?

**VII. Findings and Certifications**

*Justification for Interim Rule*

It is the general practice of HUD to publish a rule for public comment before issuing a rule for effect, in accordance with its regulations in 24 CFR part 10. Section 511 of the Quality Housing and Work Responsibility Act of 1998, however, specifically directs that

HUD issue this regulation as an interim rule.

*Paperwork Reduction Act*

The information collection requirements in this interim rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates the total reporting and recordkeeping burden that will result from the PHA Plans are as provided under the caption ''Reporting Burden.'' As the preamble to this rule has discussed, many of the PHA Plan items represent existing reporting and recordkeeping requirements. Therefore the reporting burden does not an entirely new reporting burden but instead reflects the existing reporting burden which has been modified by the PHA Plan requirements.

REPORTING BURDEN

| Number of respondents | Freq. of response | Est. time (hours) | Total (hrs.) |
|---|---|---|---|
| 3,400 ..... Total Reporting Burden: 353,600. | 1 | 104 hrs | 353,600 |

In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the collection of information to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the rule, however. Comments must refer to the rule by name and docket number (FR–4420) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Mildred Hamman, Reports Liaison Officer, Department of Housing & Urban Development, Office of Public and Indian Housing, Room 4238, 451 Seventh Street, SW, Washington, DC 20410

*Executive Order 12866*

This interim rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, Regulatory Planning and Review. OMB determined that this interim rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington DC, 20410.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This interim rule implements, by statutory directive, a comprehensive planning system for public housing agencies which also provides for consolidated statement of PHA policies on various PHA operations and also provides a consolidated reporting mechanism. The public housing agency plans ultimately should minimize administrative burden on all PHAs, including small PHAs, consistent with reasonable accountability. HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. In this regard, the interim rule provides for submission of a streamlined plan by small entities. HUD is soliciting additional recommendations on how small PHAs might fulfill the purposes of the rule (and the statutory requirements) in a way that is less burdensome to them.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this interim rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule pertains solely to Federal assistance and no programmatic or policy changes would result from this interim rule that affect the relationship between the Federal Government and State and local governments.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private

sector, within the meaning of the UMRA.

**List of Subjects in 24 CFR Part 903**

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended by adding part 903 to read as follows:

## PART 903—PUBLIC HOUSING AGENCY PLANS

Sec.



**Authority:** 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

### § 903.1 What are the public housing agency plans?

(a) There are two public housing agency plans. They are:

(1) The 5-year plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every 5 PHA fiscal years; and

(2) The annual plan (Annual Plan) that the PHA must submit to HUD for each fiscal year for which the PHA receives:

(i) Section 8 tenant-based assistance (section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Public housing operating subsidy or capital fund (section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) The purpose of the plans is to provide a framework for local accountability and an easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning its operations, programs and services.

(c) HUD may prescribe the format of submission (including electronic format submission) of the plans. PHAs will receive appropriate notice of any prescribed format.

(d) The requirements of this part only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(e) In addition to the waiver authority provided in 24 CFR 5.110, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

### § 903.3 When must a PHA submit the plans to HUD?

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning January 1, 2000. The first 5-Year Plans will be due no later than 75 days before January 1, 2000. For PHAs whose fiscal years begin after January 1, 2000, their 5-Year Plans are due no later than 75 days before the commencement of their fiscal year. For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(2) PHAs may choose to update their 5-Year Plans every year as good management practice. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans.

(b) *The Annual Plan.* The first Annual Plan submitted by a PHA must be submitted 75 days in advance of the first PHA fiscal year in which the PHA receives Federal fiscal year 2000 funds. Since the first PHA fiscal year funded with Federal Fiscal Year 2000 funds will commence January 1, 2000, the first Annual Plan will be due 75 days in advance of that date or October 15, 1999. PHAs with later fiscal year commencement dates must submit their Annual Plans 75 days in advance of their fiscal year commencement date. Subsequent Annual Plans will be due 75 days in advance of the commencement of a PHA's fiscal year.

### § 903.5 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan for the 5 PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD, a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, PHAs must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submission of the first 5-Year Plan, a PHA in their succeeding 5-Year Plans, in addition to addressing their mission, goals and objectives for the next 5 years, must address the progress made by the PHA in meeting its goals and objectives described in the previous 5-Year Plan.

### § 903.7 What information must a PHA provide in the Annual Plan?

The Annual Plan must include the information provided in this section, except that for the first Annual Plan, the following information need not be submitted: the information required by paragraph (l) of this section that pertains to section 12 of the U.S. Housing Act of 1937 (42 U.S.C. 1437j(c)); the information required by paragraph (m) of this section that relates to drug elimination policies; and the information required by paragraph (n) of this section. Additionally, the information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise, and the information that the PHA must submit for HUD approval under the Annual Plan are the discretionary policies of the various plan components or elements (for example, selection policies) and not the statutory or regulatory requirements that govern these components.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) The housing needs of each of these groups must be identified separately. The identification of housing needs should address issues of affordability, supply, quality, accessibility, size of units and location. The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing of the significant PHA operating, capital and other proposed Federal resource commitments available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each federal program. In this statement, the PHA also must describe the planned uses for the resources.

(c) *A statement of the PHA's policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies governing resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, assignment and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the U.S. Housing Act of 1937. The requirement to submit PHA policies governing assignment only applies to public housing. This statement also must include the following information:

(1) The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing projects. These procedures must include any site-based waiting lists, as provided by section 6(s) of the U.S. Housing Act of 1937. This section permits PHAs to establish a system of site-based waiting lists that are consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that such adoption is consistent with affirmatively furthering fair housing, such as reasonable marketing activities;

(v) The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit);

(B) At least biannually use independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD; and

(C) Taking any steps necessary to remedy the problems surfaced during the review and the steps necessary to affirmatively further fair housing.

(2) The PHA's admissions policy with respect to deconcentration of very low-income families and income-mixing. Deconcentration and income-mixing is required by section 16 of the U.S. Housing Act of 1937 (42 U.S.C. 1437n). To implement the requirement, which is applicable specifically to public housing, PHAs must:

(i) Determine and compare the relative tenant incomes of each development, as well as the household incomes of census tracts in which the developments are located; and

(ii) Consider what admissions policy measures or incentives, if any, will be needed to bring higher-income families into lower-income developments (or if appropriate to achieve deconcentration of poverty, into developments in lower income census tracts) and lower-income families into higher income developments (or if appropriate to achieve deconcentration of poverty, into developments in higher income census tracts). PHA policies must devote appropriate attention to both of these goals. PHA policies must affirmatively further fair housing; and

(i) Make any appropriate changes in their admissions policies.

(3) The policies governing eligibility, selection and admissions are applicable to public housing and tenant-based assistance, except for the information requested on site-based waiting lists and deconcentration. This information is applicable only to public housing.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that pertain to rents charged for public housing units, including applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must describe the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA. This statement also must include a description of any measures necessary for the prevention or eradication of pest infestation which includes cockroach infestation. Additionally, this statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(2) The information pertaining to PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information pertaining to program management applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. This includes public housing grievance procedures and tenant-based assistance informal review procedures for

applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only (public housing projects owned, assisted or operated by the PHA), this statement describes the capital improvements necessary to ensure long-term physical and social viability of the public housing projects, including the capital improvements to be undertaken in the year in question and their estimated costs. PHAs are encouraged to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* With respect to public housing only, a description of any public housing project, or portion of a public housing project, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the U.S. Housing Act of 1937 (42 U.S.C. 1437p), and the timetable for demolition and/or disposition.

(i) *A statement of the public housing projects designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.* With respect to public housing only, this statement identifies any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated for occupancy only by the elderly families or only by families with disabilities, or by elderly families and families with disabilities or will apply for designation for occupancy by only elderly families or only families with disabilities, or by elderly families and families with disabilities as provided by section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e).

(j) *A statement of the conversion of public housing to tenant-based assistance.* (1) This statement describes any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the U.S. Housing Act of 1937 (42 U.S.C. 1437z–5), or that the PHA plans to voluntarily convert under section 22 of the U.S. Housing Act of 1937 (42 U.S.C. 1437t). The statement also must include an analysis of the projects or buildings required to be converted under section 33, and the amount of assistance received commencing in Federal Fiscal 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(2) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.* This statement describes any homeownership programs administered by the PHA under section 8(y) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(y)), or under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h)), or an approved HOPE I program (42 U.S.C. 1437aaa) or for any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the U.S. Housing Act of 1937 (42 U.S.C. 1437z–4).

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the U.S. Housing Act of 1937 (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.* With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments, and the plan must provide, on a project-by-project or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(1) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA;

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities;

(iv) The information required to be included by the Public Housing Drug Elimination Program regulations if the PHA expects to receive drug elimination program grant funds.

(2) If HUD determines at any time that the security needs of a public housing project are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a–3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and also certify that it will affirmatively further fair housing. The certification is applicable to both the 5-Year Plan and the Annual Plan.

(2) PHAs shall be considered in compliance with the obligation to affirmatively further fair housing if they examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, and work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the

PHA's involvement, and maintain records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* The PHA's plan must include the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the U.S. Housing Act of 1937 (42 U S.C. 1437c(h)).

(q) *A statement of asset management.* This statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* PHAs also must include in their Annual Plan:

(1) A table of contents that corresponds to the Annual Plan's components in the order listed in this section. The table of contents also must identify the location of any materials that are not being submitted with the Annual Plan;

(2) An executive summary that provides a brief overview of the information that the PHA is submitting in its Annual Plan and relates the Annual Plan programs and activities to the PHA's mission and goals as described in the 5-Year Plan, and explains any substantial deviations of these activities from the 5-Year Plan; and

(3) For all Annual Plans following submission of the first Annual Plan, a brief summary of the PHA's progress in meeting the mission and goals described in the 5-Year Plan.

**§ 903.9 Must a troubled PHA include additional information in its Annual Plan?**

Yes. A PHA that is at risk of being designated as troubled or is designated as troubled under section 6(j)(2) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d(j)(2)) or under the Public Housing Assessment System (24 CFR part 901) must include its operating budget, and include or reference any applicable memorandum of agreement with HUD or other plan to improve performance and such other material as HUD may prescribe.

**§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?**

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled under section 6(j)(2); and

(3) PHAs that only administer tenant-based assistance and that do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. A streamlined plan must included the following information:

(1) For high-performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be include only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHA's that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (f), (k), (l), (o), (p) and (r). The information required by § 903.7(b) (financial resources) can be a statement of the programs the PHA administers and the estimated number of new families to be assisted and total families to be assisted in each program.

**§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?**

(a) A Resident Advisory Board is a board whose membership is made up of individuals who adequately reflect and represent the residents assisted by the PHA. The role of the Resident Advisory Board (or Resident Advisory Boards) is to participate in the PHA planning process and to assist and make recommendations regarding the PHA plan. The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards.

(b) Each PHA must establish one or more Resident Advisory Boards, and the membership on the board must adequately reflect and represent the residents assisted by the PHA.

(1) To the extent a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as a Resident Advisory Board. If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives.

(2) Where the PHA has a tenant-based assistance program of significant size, the PHA shall assure that the Resident Advisory Board or Boards has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation. Where resident councils do not exist which would adequately reflect and represent the residents assisted by the PHA, the PHA may appoint additional Resident Advisory Boards or Board members, provided that the PHA shall provide reasonable notice to residents and urge that they form resident councils that comply with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan. In submitting the final plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations. Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

**§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?**

The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan to the jurisdiction in which the PHA is located. The Consolidated Plan includes the Analysis

of Impediments to Fair Housing Choice. The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

**§ 903.17 Must the PHA make public the contents of the plans?**

(a) Yes. The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan or Annual Plan, or both as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s) and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

**§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?**

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

**§ 903.21 May the PHA amend or modify a plan?**

A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, the PHA:

(a) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(b) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

**§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?**

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD and with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(3) The plan is not prohibited or inconsistent with the U.S. Housing Act of 1937 or any other applicable Federal law.

(b) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(iii) Is not consistent with all applicable laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its amendment or modification to the plan, HUD will issue written notice to the PHA if the plan has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the PHA submits the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make its approved plan available for review and inspection, at the principal office of the PHA during normal business hours.

**§ 903.25 How does HUD ensure PHA compliance with its plan?**

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall respond appropriately to any complaint concerning PHA noncompliance with its plan. If HUD determines that a PHA is not in compliance with its plan, HUD will take necessary and appropriate action to ensure compliance by the PHA.

Dated: February 1, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 99–3651 Filed 2–17–99; 8:45 am]

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federal register

Thursday
February 18, 1999

Part III

# Department of Housing and Urban Development

**Renewal of Section 8 Tenant-Based Assistance Contracts; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4459–N–01]**

## Renewal of Section 8 Tenant-Based Assistance Contracts

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This **Federal Register** notice provides for the benefit of the public the contents of a HUD notice issued to public housing agencies (PHAs) on December 30, 1998. The December 30, 1998 notice advised PHAs how HUD is calculating the amount of assistance available to them to renew Section 8 rental and certificate and voucher contracts. A recent statutory provision specifies the method for HUD to use in allocating housing assistance available for renewal of these expiring contracts. The statute required HUD to implement the provision through notice not later than December 31, 1998, and to issue final regulations on the subject developed through the negotiated rulemaking process no later than October 21, 1999. In accordance with the statute, the notice was issued on December 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708–1380 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

The statutory provision that provides the foundation for this notice is section 8(dd) of the United States Housing Act of 1937 (the Housing Act of 37) (42 U.S.C. 1437(dd)), as added by section 556(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). The new section 8(dd) directs HUD to establish an allocation baseline amount of assistance (budget authority) to cover the renewals, and to apply an inflation factor (based on local or regional factors) to the baseline. The new provision states as follows:

(dd) *Tenant-Based Contract Renewals.*—Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

The new statute (in section 556(b)) requires HUD to implement section 8(dd) through notice not later than December 31, 1998, and to issue final regulations on this subject that are developed through the negotiated rulemaking process no later than October 21, 1999.

This notice is effective for the allocation of Federal Fiscal Year 1999 assistance used to renew funding increments expiring between January 1, 1999 and December 31, 1999. HUD will develop a final rule implementing the requirements of Section 8(dd) through a negotiated rulemaking process, in accordance with the statutory requirements of section 556. Calendar Year 2000 funding will be allocated in accordance with the final rule.

### Applicability

This notice applies to renewal of all expiring rental certificate and voucher funding increments administered by Public Housing Agencies (PHAs). This notice does not apply to renewal of expiring Mod Rehab funding increments, to Housing Assistance Payments Contracts that are extended 12 months, or to Offices of Native American Programs and expiring Section 8 contracts administered by Tribally Designated Housing Entities.

### Determining the Baseline

HUD will determine the number of units leased on October 1, 1997, through information submitted by PHAs documenting their administrative fee (accompanying the Form HUD–52681, Section 8 Voucher for Payment of Annual Contributions and Operating Statement.) Based on this information, HUD will compare the number of units leased to the number of units reserved for the funding increments under the PHA's Annual Contributions Contract (ACC) on October 1, 1997.

The number of units under ACC will be determined as follows: A query of HUDCAPS, the Department's automated accounting system, will provide the number of units under ACC as of October 1, 1997. HUD will add to that number, the additional authorized units as a result of HUD's review of leasing in excess of contract levels conducted in Federal Fiscal Year 1998 in accordance with letters sent to each affected PHA (See PIH Notice 98–22, issued April 10, 1998). In establishing the baseline number of units to be renewed, HUD will use the higher of the number of ACC units, with adjustments as noted below, or the number of leased units as of October 1, 1997. HUD also will add any additional units, placed under ACC, which were awarded to PHAs from funding available during Federal Fiscal Year 1998, including incremental funding as well as non-incremental funding such as that awarded to sustain assistance to families pursuant to the conversion of project-based assistance to tenant-based assistance. HUD also will add the number of tenant-based units placed under ACC as replacements for expiring Moderate Rehabilitation Housing Assistance Payment Contracts.

### Determining Annual Cost per Unit

HUD will determine an actual per unit cost from the last year end statement that it has received from each PHA by dividing the total annual contributions earned by the unit months leased. HUD will apply the FY 1999 Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factors from Table 2, published in the **Federal Register** on September 24, 1998, to inflate the per unit cost from 1998 to 1999. If the last closed year end is before 1998, HUD will use a factor of 2.5 percent to inflate the per unit cost per year to 1998. The inflated, monthly per unit cost will be rounded and multiplied by 12 months. In addition, HUD will add $5 per unit to fund an estimated increase in the administrative fee authorized in the QHWRA.

### Determining the Budget Authority To Be Allocated

The Department will multiply the number of units for each PHA that are expiring during Calendar Year 1999 by the cost per unit, as determined in accordance with the paragraph above. HUD will assign renewal funding sufficient to cover a 12-month term for units expiring within each quarter (e.g., the fund assignment for the first quarter of calendar year 1999 will fund all units expiring from January 1, 1999 through March 31, 1999). In addition, the Department will fund the difference based on the comparison between the units under ACC, and leased units as of October 1, 1997, using the established per unit cost.

### Renewal Funding Available

The budget authority that will be allocated is subject to the availability of

appropriations. HUD anticipates that sufficient funding is available to fully fund each PHA in accordance with this notice.

**Catalog**

The Catalog of Federal Domestic Assistance numbers for the programs affected by this notice are 14.855 and 14.857.

**Authority:** 42 U.S.C. 1437f(dd).

Dated: February 9, 1999.

**Deborah Vincent,**

*General Deputy Assistant, Secretary for Public and Indian Housing.*

[FR Doc. 99–3652 Filed 2–17–99; 8:45 am]

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Thursday
February 18, 1999

Part IV

# Department of Housing and Urban Development

**Quality Housing and Work Responsibility Act of 1998; Initial Guidance; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4434–N–01]**

## Quality Housing and Work Responsibility Act of 1998; Initial Guidance

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** On October 21, 1998, President Clinton signed into law the Quality Housing and Work Responsibility Act of 1998. This new statute, part of HUD's fiscal year 1999 HUD Appropriations Act, embodies many of the reforms of the HUD 2020 Management Reform Plan that are directed at revitalizing and improving HUD's public housing and Section 8 assistance programs. The purpose of this Notice is to advise the public of those public and assisted housing statutory provisions that are effective immediately and action that may or should be taken now. This Notice also provides guidance on certain other provisions in the FY 1999 HUD Appropriations Act that impact public housing programs and Section 8 assistance.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding public housing and the Section 8 certificate, voucher and moderate rehabilitation programs contact Rod Solomon, Senior Director for Policy and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC, 20410; telephone (202) 708–0713 (this is not a toll-free number). For further information regarding other Section 8 programs contact Willie Spearmon, Director, Office of Multifamily Business Products; telephone (202) 708–3000. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Program specialists for more specific HUD program areas are listed on the HUD web page at http://hudweb.hud.gov/offices.html.

**SUPPLEMENTARY INFORMATION:**

### Introduction

On October 21, 1998, President Clinton signed into law HUD's fiscal year (FY) 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act) (QHWRA). The FY 1999 HUD Appropriations Act and the QHWRA (Pub.L. 105–276, 112 Stat. 2461), together, enact landmark measures that include transforming public housing, deconcentrating poverty, creating additional housing assistance vouchers, merging the Section 8 certificate and voucher programs, and enabling more families to obtain FHA mortgages to become homeowners. Of particular importance to HUD and its public housing and Section 8 program partners are the reforms made by the QHWRA. The QHWRA makes significant and numerous amendments to the United States Housing Act of 1937 (USHA). It is important to note, however, that the USHA remains in effect except as amended by the QHWRA.

The QHWRA constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The QHWRA enacts into law many of the reforms originally proposed in Secretary Andrew Cuomo's HUD 2020 Management Reform Plan, HUD's public housing bill and Congressional bills that are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. For public housing, the HUD 2020 Management Reform Plan provides for consolidation of public housing programs, decreased regulation of well-managed public housing agencies (PHAs), higher performance standards for all PHAs, and specific action to address PHAs with troubled management. The QHWRA adopts these reforms, and enacts additional measures to protect access to housing assistance for the poorest families, deconcentrate poverty in public housing, support families making the transition from welfare to work, and transform the public housing stock and the Section 8 tenant-based assistance programs.

The purposes of the QHWRA, as stated in section 502(b) of the QHWRA, are as follows:

> The purpose of this [the QHWRA] is to promote homes that are affordable to low-income families in safe and healthy environments, and thereby contribute to the supply of affordable housing, by—
>
> (1) Deregulating and decontrolling public housing agencies, thereby enabling them to perform as property and asset managers;
>
> (2) Providing for more flexible use of Federal assistance to public housing agencies, allowing the authorities to leverage and combine assistance amounts with amounts obtained from other sources;
>
> (3) Facilitating mixed income communities and decreasing concentrations of poverty in public housing;
>
> (4) Increasing accountability and rewarding effective management of public housing agencies;
>
> (5) Creating incentives and economic opportunities for residents of dwelling units assisted by public housing agencies to work, become self-sufficient, and transition out of public housing and federally assisted dwelling units;
>
> (6) Consolidating the voucher and certificate programs for rental assistance under section 8 of the United States Housing Act of 1937 into a single market-driven program that will assist in making tenant-based rental assistance under such section more successful at helping low-income families obtain affordable housing and will increase housing choice for low-income families; and
>
> (7) Remedying the problems of troubled public housing agencies and replacing or revitalizing severely distressed public housing projects.

### Implementation of the QHWRA

The QHWRA makes several of its provisions effective upon enactment (October 21, 1998). Other provisions of the QHWRA will take effect on various dates between October 21, 1998, the enactment date of the QHWRA, and October 1, 1999, the beginning of Federal fiscal year 2000. (A Federal fiscal year runs from October 1st to September 30th). The majority of the provisions of the QHWRA, however, will take effect on October 1, 1999. Provisions of the QHWRA which are effective upon enactment and which conflict with existing regulations prevail over the regulations unless HUD has specifically stated otherwise, in this Notice or elsewhere. In addition to specifying the dates by which various statutory sections will take effect, the QHWRA also specifies the method of implementation for many of its provisions. These methods include notice and comment rulemaking (proposed rulemaking), interim rulemaking, negotiated rulemaking, or issuance by direct notice or **Federal Register** notice.

The purpose of this Notice is to advise HUD's public housing and Section 8 program partners, as well as members of the public, of certain provisions of the QHWRA and the FY 1999 HUD Appropriations Act that are effective immediately and to provide guidance with respect to actions that may now be taken or should be taken by PHAs and owners of Section 8 assisted projects. This Notice does not provide a section-by-section analysis of the QHWRA, nor does it provide guidance on all sections. In this Notice, however, HUD has attempted to address those key statutory sections that are effective now, and which HUD believed would be helpful to PHAs and others to have early guidance. The statutory sections that are effective now and for which HUD is issuing initial guidance are covered in

Section I of this Notice. The majority of the statutory sections of the QHWRA that are not addressed in this Notice (1) require rulemaking by the QHWRA, (2) have been determined by HUD to be not immediately effective, or (3) need elaboration or interpretation, and therefore require rulemaking on the part of HUD or issuance of separate guidance that addresses in detail the subject matter of a particular statutory section. Section II of this Notice provides a list of those statutory provisions for which the QHWRA requires rulemaking for implementation or HUD has determined that rulemaking is necessary for implementation.

The guidance provided in this Notice, read together with reference to the statutory language, will better assist the reader in understanding (1) the changes that are being implemented in HUD's public housing and Section 8 programs, (2) the prompt action that HUD recommends be taken now or in the very near future, and (3) the reasons for any deferred action with respect to certain statutory provisions. Accordingly, the guidance in this Notice is complete only when read in conjunction with the statutory language. The contents of the QHWRA are available on the Internet by Thomas Legislative Information Service at http://thomas.loc.gov or by contacting HUD's Office of Public and Indian Housing or HUD's Office of Housing.

In addition to the guidance provided by this Notice, HUD staff, and specifically the staff in the Office of Public and Indian Housing at Headquarters and in the Field Offices, are ready to assist PHAs in understanding the provisions of the QHWRA and with carrying out their responsibilities under new provisions of the QHWRA. The Office of Public and Indian Housing has established a section of its web site that is devoted to providing additional information about the QHWRA and includes a detailed summary of the new law (please see http://www.hud.gov/pih/legis/titlev.html). HUD is committed to working closely with its public housing and Section 8 partners to see that the changes made by the QHWRA to HUD's public housing and Section 8 programs are successfully implemented and these programs are significantly improved with respect to the services and assistance they provide to low-income families.

**Other QHWRA Publications in Today's Federal Register**

Elsewhere in today's **Federal Register**, HUD is publishing:

(1) One of the most significant rules required by the QHWRA—the interim rule that would implement the Public Housing Agency Plan. This rulemaking is required by section 511 of the QHWRA.

(2) An Advance Notice of Proposed Rulemaking on HUD's public housing drug elimination program that solicits comments in advance of rulemaking on HUD's proposal to provide for formula funding of HUD's drug elimination grant funds.

(3) A notice on Section 8 renewals. Section 556 of the QHWRA added a new provision, section 8(dd) to the U.S. Housing Act of 1937. Section 8(dd) specifies the method for calculating the amount of assistance to be provided for renewal of all expiring tenant-based annual contributions contracts. PHAs were advised of this methodology for fiscal year 1999, by direct notice issued on December 31, 1998. Today's **Federal Register** on Section 8 renewals publishes this notice for the benefit of the public. The policy for Section 8 renewals for future years will be the subject of negotiated rulemaking for the development of final regulations.

**Nondiscrimination Requirements**

HUD's responsibilities and the responsibilities of its program partners, in implementing new programs and program changes covered by the QHWRA include (1) ensuring compliance with applicable nondiscrimination requirements, such as the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act, and (2) affirmatively furthering fair housing. These responsibilities are reiterated and reemphasized by amendments made by the QHWRA to the U.S. Housing Act of 1937 or to HUD's programs, generally.

**Section I. Statutory Provisions That Are Immediately Effective and Accompanying Guidance**

This section of the Notice lists those statutory provisions of both the FY 1999 HUD Appropriations Act and the QHWRA that are immediately effective and may require prompt action on the part of HUD's program partners now or in the very near future. HUD notes that in many cases the statutory provisions listed in this Section I may require conforming rulemaking at a later date; that is, rulemaking that updates HUD's regulations so that the regulations conform to statutory changes to the programs.

*A. FY 1999 HUD Appropriations Act*

*Elimination of Three-Month Delay on Reissuance of Section 8 Certificates and Vouchers.* The FY 1999 HUD Appropriations Act does not extend or continue the previous three month delay that was imposed on the reissuance of certificates and vouchers.

Action Guidance for the Section 8 Certificate and Voucher Program: Effective October 1, 1998, neither Section 8 certificates and vouchers currently being held nor any further turnover of Section 8 certificates and vouchers are subject to any statutory delay period on reissuance.

*Elimination of the Shopping Incentive for Voucher Families Who Remain in the Same Unit upon Initial Receipt of Assistance.* Section 209 of the FY 1999 HUD Appropriations Act eliminates the ''shopping incentive'' in the following situation involving admission to the Section 8 voucher program by a family:

(1) Who is admitted to the voucher program after December 20, 1998;

(2) Who remains in the same unit or complex; and

(3) Where the applicable payment standard exceeds the gross rent for the unit. (The applicable payment standards is the lower of the payment standard for the ''family unit size'' or the payment standard for the unit actually rented by the family.)

Therefore, the voucher program housing assistance payment for a ''stayer admission'' family who leases a unit with a gross rent (rent to owner plus the utility allowance) below the applicable payment standard for the family would be the amount by which the gross rent exceeds the greater of 30% of the family's monthly adjusted income, 10% of its monthly gross income, or the minimum rent.

Action Guidance for the Section 8 Voucher Program: This statutory provision is effective for all voucher Housing Assistance Payment (HAP) contracts for ''stayer admissions'' effective on or after December 20, 1998. HUD's Office of Public and Indian Housing (PIH) issued a notice of December 18, 1998, Notice PIH 98–64, which provides additional information on the statutory changes to the Section 8 voucher program. Additionally, at PIH's website, PIH provides information about HUD's Multifamily Tenant Characteristics System (MTCS). The January 1999 ''MTCS News Flash'' provides information on calculating the rent for voucher admissions and completing form HUD–50058. (Please see HUD's website at http://www.hud.gov/pih/systems/mtcs/pihmtcs.html.) The payment standard

on line 12(j) of form HUD–50058 for these stayer admissions is the *lower* of (1) the PHA's payment standard for the family unit size, (2) the PHA's payment standard for the unit actually rented by the family, or (3) the unit's gross rent at the time of admission to the program.

Finally, it is noted that the section 209 amendment only applies until HUD issues regulations that make effective the voucher and certificate program merger legislation at section 545 of the QHWRA. These changes will eliminate the shopping incentive for all voucher families, not just for stayer admissions.

*Rent Payments of Families with Enhanced Tenant-Based Assistance in Conjunction with the Prepayment of Certain 236 and 221(d)(3) FHA Mortgages.* The FY 1999 HUD Appropriations Act, under the Housing Certificate Fund heading, provides that during Federal fiscal year 1999 (October 1, 1998 through September 30, 1999), the minimum rent of families who receive (or will receive) ''enhanced'' vouchers and whose income ''declines to a significant extent'' must not exceed the greater of:

(1) 30% of monthly adjusted income; or

(2) The percentage of monthly adjusted income paid by the family for rent at the time of the mortgage prepayment.

This statutory rent limitation only applies to enhanced tenant-based assistance that is provided to families located in projects where owners prepaid certain federally assisted mortgages. HUD construes the words ''significant extent'' to mean a decrease in income of fifteen percent (15%) or more.

Action Guidance for the Section 8 Voucher Program. No action required by the PHA at this time. HUD will issue further implementation instructions on this statutory section.

*Ineligibility of Individuals Convicted of Manufacturing or Producing Methamphetamine (commonly referred to as ''speed'') for Certain Housing Assistance.* Section 428 of the FY 1999 HUD Appropriations Act amends section 16 of the USHA to add a new subsection (f) that makes individuals convicted of manufacturing or producing methamphetamine (speed) ineligible for certain housing assistance. New subsection (f) applies to public housing and the certificate, voucher and moderate rehabilitation programs. PHAs must have standards to:

(1) Permanently deny admission to public housing units and the Section 8 certificate, voucher and moderate rehabilitation programs; and

(2) Immediately and permanently terminate tenancy in public housing or terminate Section 8 assistance, of persons convicted of manufacturing or producing methamphetamine on the premises of the assisted housing project in violation of any Federal or State law.

''Premises'' is defined as the building or complex in which the dwelling unit is located, including common areas and grounds. Although the statute does not define the term ''premises,'' HUD is defining the term in this Notice to provide PHAs with guidance on what are the parameters of ''premises.''

Action Guidance for the Public Housing Program. PHAs must revise applicable occupancy policies and practices to reflect these standards. Except to the extent this is already covered by lease provisions that authorize eviction for drug-related criminal activity, public housing leases must be modified to provide for eviction on these grounds.

Action Guidance for the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. PHAs must revise their occupancy policies to implement these admission and subsidy termination provisions.

*B. Quality Housing and Work Responsibility Act of 1998 (QHWRA)*

This notice does not address all sections of the QHWRA but strives to provide as much guidance for as many sections of the QHWRA as possible. The following lists the sections of the QHWRA that are addressed in this Notice. The sections are either addressed in this Section I or in Section II of this Notice.

Sec. 506. Definitions
Sec. 507. Minimum Rent.
Sec. 508. Determination of Adjusted Income and Median Income.
Sec. 509. Family Self-Sufficiency Program.
Sec. 511. PHA Plan.
Sec. 512. Community Service and Family Self-Sufficiency Requirements.
Sec. 513. Income Targeting.
Sec. 514. Repeal of Federal Preferences.
Sec. 515. Joint Ventures and Consortia of Public Housing Agencies.
Sec. 519. Public Housing Capital and Operating Funds.
Sec. 520. Total Development Costs.
Sec. 522. Repeal of Modernization Fund.
Sec. 523. Family choice of rental payment.
Sec. 524. Occupancy by Police Officers and Over-Income Families.
Sec. 526. Pet Ownership in Public Housing.
Sec. 530. Housing Quality Requirements.
Sec. 531. Demolition and Disposition of Public Housing.
Sec. 533. Conversion of Public Housing to Vouchers; Repeal of Family Investment Centers.
Sec. 535. Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance grants for Projects.
Sec. 537. Required Conversion of Distressed Public Housing to Tenant-Based Assistance.
Sec. 539. Mixed Finance Public Housing.
Sec. 545. Merger of Certificate and Voucher Programs.
Sec. 547. Administrative Fees.
Sec. 548. Law Enforcement and Security Personnel in Assisted Housing.
Sec. 549. Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Assistance Contract.
Sec. 551. Funding and Allocation.
Sec. 554. Leasing to Voucher Holders.
Sec. 555. Homeownership (voucher) Option.
Sec. 556. Section 8 Renewals for Tenant-Based Certificate and Vouchers Funds.
Sec. 559. Rulemaking and Implementation.
Sec. 561. Home rule flexible grant demonstration program.
Sec. 565. Expansion of powers for dealing with public housing agencies in substantial default.
Sec. 575. Provisions applicable only to public housing and section 8 assistance.
Sec. 584. Use of American Products.
Sec. 586. Amendments to Public and Assisted Housing Drug Elimination Act of 1990.
Sec. 592. Use of Assisted Housing by Aliens.
Sec. 597. Moderate rehabilitation program.
Sec. 599. Tenant participation in multifamily housing projects.

The following chart provides an overview of the above-listed sections of the QHWRA, which have been designated by Congress as immediately effective, and shows their applicability to HUD's public housing program, Section 8 certificate and voucher program, Section 8 project-based certificate and moderate rehabilitation program, and other Section 8 programs.

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APPLICABILITY OF THE QHWRA TO VARIOUS ASSISTED HOUSING PROGRAMS
[Provisions Designated by Congress or this Notice as Immediately Effective]

| Statutory Section | Applies to public housing? | Applies to Section 8 certificates & vouchers? | Applies to Section 8 PBC & moderate rehabilitation? | Applies to other Section 8 programs? |
|---|---|---|---|---|
| Sec. 506 Definitions | yes | yes | yes | yes |
| Sec. 507 Minimum Rent | yes | yes | yes | yes |
| Sec. 509 FSS Program | yes | yes | yes for PBC<br>no for Mod Rehab | no |
| Sec. 512(d) Welfare Decreases Due to Family Noncompliance | yes | yes | no | no |
| Sec. 513<br>a. Deconcentration<br>b. Income Targeting | a. yes<br>b. yes | a. no<br>b. yes | a. no<br>b. yes | a. no<br>b. yes |
| Sec. 514 Repeal of Federal Preferences | yes | yes | yes | yes |
| Sec. 519 Capital & Operating Funds [only specified subsections take effect immediately] | yes | no<br>[except that funds from emergency reserve may be used for tenant-based assistance] | no | no |
| Sec.520 Total Development Costs | yes | no | no | no |
| Sec. 522 Repeal of Mod Fund | yes | no | no | no |
| Sec. 524 Renting to Police Officers & Other Over Income Families | yes | no | no (but a comparable provision in Sec. 548 applies) | no (but a comparable provision in Sec. 548 applies) |

| Statutory Section | Applies to public housing? | Applies to Section 8 certificates & vouchers? | Applies to Section 8 PBC & moderate rehabilitation? | Applies to other Section 8 programs? |
|---|---|---|---|---|
| Sec. 531 Public Housing Demo/Dispo | yes | no | no | no |
| Sec. 535 HOPE VI | yes | no | no | no |
| Sec. 537 Conversion of Distressed Public Housing | yes | yes | no | no |
| Sec. 547 Admin Fees | no | yes | yes | no |
| Sec. 548 Renting to Police Officers | no | no | yes | yes |
| Sec. 549(a) a. Repeal of Endless Lease & 90 Day Owner Termination Notice | a. no | a. yes | a. no | a. no |
| b. 1-Year Owner Termination Notice | b. no | b. no | b. yes | b. yes |
| c. Repeal of 90 Day Rent Increase Notice | c. no | c. no | c. no - PBC; yes- mod rehab | c. yes |
| Sec. 551 Funding and Allocation | yes | yes | yes | yes |
| Sec. 554 Repeal of "Take-1, Take All" | no | yes | no | no |
| Secs. 555 & 545-(§8(o)(15) Homeownership Vouchers | no | yes | no | no |
| Sec. 561 Home Rule Demo | yes | yes | no | no |

| Statutory Section | Applies to public housing? | Applies to Section 8 certificates & vouchers? | Applies to Section 8 PBC & moderate rehabilitation? | Applies to other Section 8 programs? |
|---|---|---|---|---|
| Sec. 565 PHAs in Default | yes | yes | yes | no |
| Sec. 575(e) Drug Center Records | yes | no | no | no |
| Sec. 592 Aliens [only applicable to PHA administered programs] | yes | yes | yes | yes |
| Sec. 597 Mod Rehab Rents for Renewed HAP Contracts | no | no | yes, applicable to mod rehab | no |
| Sec. 599 Tenant Participation | no | no (except for enhanced vouchers) | yes | yes |

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**Subtitle A of the QHWRA**

*Section 507—Minimum Rent for Public Housing and Section 8 Assistance.* Section 507 amends section 3(a) of the USHA and follows the previous statutory authority of requiring minimum rents of up to $50 for public housing and the Section 8 programs. In the public housing program and the Section 8 programs other than vouchers, ''minimum rent'' refers to minimum total tenant payment (TTP) and not a minimum tenant rent (TR). For families subject to a utility allowance in these programs, the families will be subject to a minimum total tenant payment but could still be entitled to a utility reimbursement if the utility allowance is greater than the TTP.

Action Guidance for Public Housing and Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. PHAs are not required to take any action to maintain any current minimum rents of up to $50 for the public housing, Section 8 certificate, voucher and moderate rehabilitation programs.

Action Guidance for Other Section 8 Programs. The minimum rent of $25 which HUD has imposed for other Section 8 project-based assistance remains in place.

*Exceptions to Minimum Rent.* The QHWRA also establishes certain exceptions to the minimum rent requirements for hardship circumstances. Section 3(a)(3)(B) of the USHA generally states that financial hardship includes the following situations (1) the family has lost eligibility for is awaiting an eligibility determination for a Federal, State, or local assistance program; (2) the family would be evicted as a result of the imposition of the minimum rent requirement; (3) the income of the family has decreased because of changed circumstance, including loss of employment; (4) a death in the family has occurred; and (5) other circumstances determined by the PHA or HUD.

The QHWRA provides that an exemption may not be provided if the hardship is determined temporary. The QHWRA also provides, however, that the PHA or owner may not evict the family for nonpayment of rent on the basis of hardship if the hardship is determined by the PHA or HUD to be temporary during the 90-day period beginning upon the date of the family's request for the exemption. During this 90-day period, the family must demonstrate that the financial hardship is of a long-term basis. If the family demonstrates that the financial hardship is of a long-term basis, the PHA or HUD shall retroactively exempt the family from the applicability of the minimum rent requirement for the 90-day period. (HUD's responsibilities will be carried out by owners as appropriate.)

Action Guidance for the Public Housing Program. PHAs must revise operating procedures to immediately carry out the new statutory minimum rent hardship exception policies, and must immediately grant such exceptions for families who qualify. The PHA can request reasonable documentation of hardship under the circumstances. While HUD may issue further guidance, HUD provides the following immediate guidance.

(1) As soon as practicable, the PHA must notify all families of right to request a minimum rent hardship exemption under the law, and that determinations are subject to the grievance procedure;

(2) If the family requests a hardship exemption, the minimum rent requirement is immediately suspended.

(3) Suspension may be handled as follows: the minimum rent is suspended until a determination is made whether:

(a) There is a hardship covered by the statute; and

(b) The hardship is temporary or long-term.

If the PHA determines that there is no hardship covered by the statute, minimum rent is imposed (including backpayment for minimum rent from time of suspension).

If the PHA determines that the hardship is temporary, the minimum rent also is imposed (including backpayment for minimum rent from the time of suspension) but the family cannot be evicted for nonpayment during the 90-day period commencing on the date of the family's request for exemption of minimum rent in excess of the tenant rent otherwise payable. A reasonable repayment agreement must be offered for any such rent not paid during that period. If the family thereafter demonstrates that the financial hardship is of long-term duration, the PHA shall retroactively exempt the family from the minimum rent requirement.

The new minimum rent policies are retroactive to the effective date of the QHWRA, October 21, 1998. If a tenant in occupancy has qualified for one of the mandatory hardship between October 21, 1998 and the date of this Notice and was charged minimum rent, the PHA must make arrangements to reimburse the tenant the overpayment by providing a cash refund or otherwise offsetting future rent payments in an equitable manner.

Action Guidance for Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. The entity responsible for determining rent (the PHA or owner) must revise operating procedures to immediately carry out the new statutory minimum rent hardship exception policies. As soon as practicable, the entity responsible for determining rent (the PHA or owner) must notify all families of the right to request minimum rent hardship exceptions, and that the hardship determinations are subject to applicable PHA informal hearing procedures. The entity responsible for determining rent (the PHA or owner) can request reasonable documentation of hardship under the circumstances. While HUD may issue further guidance, HUD provides the following immediate guidance.

If a family requests a minimum rent hardship exception, the entity responsible for determining rent (the PHA or owner) must suspend payment of the minimum rent beginning the month following the family's hardship request. ''Suspension'' means that the entity responsible for determining rent (the PHA or owner) must not charge the family a minimum rent or, if applicable, discontinue charging the family a minimum rent. During the minimum rent suspension period, the family will not be required to pay a minimum rent and the housing assistance payment will be increased accordingly.

The entity responsible for determining rent (the PHA or owner) must determine promptly whether the hardship under the statute exists and whether it is temporary or long term.

If the entity responsible for determining rent (the PHA or owner) determines that there is no hardship covered by the statute, a minimum rent is imposed retroactively to the time of suspension.

If the entity responsible for determining rent (the PHA or owner) determines that the hardship is temporary, a minimum rent may not be imposed for a period of 90 days from the date of the family's request. At the end of the 90 day suspension period, a minimum rent is imposed retroactively to the time of suspension. A reasonable repayment agreement must be offered for any minimum rent backpayment by the family. (Note that the statutory eviction prohibition is not applicable since the entity responsible for determining rent (the PHA or owner) will not charge a minimum rent for 90 days, and receipt of the contract rent will not be impacted by the family's inability to pay the minimum rent during the 90 day period.)

If the entity responsible for determining rent (the PHA or owner) determines that the hardship is of long-term duration, the entity responsible for determining rent (the PHA or owner) must exempt (retroactively to the date of the family's request for a minimum rent exception) the family from the payment of the minimum rent until the hardship no longer exists.

The new minimum rent policies are retroactive to the effective date of the QHWRA, October 21, 1998. If a tenant in occupancy has qualified for one of the mandatory exceptions between October 21, 1998 and the date of this Notice and was charged a minimum rent, the entity responsible for determining rent (the PHA or owner) must make arrangements to reimburse the tenant the overpayment by providing a cash refund or otherwise offsetting future rent payment in an equitable manner.

*Section 508—Determination of Adjusted Income and Median Income in the Public Housing and Section 8 Programs.* Section 508 amends section 3(b)(5) of the USHA and as amended provides the manner in which adjusted income and median income will be determined, and provides certain mandatory exclusions.

Action Guidance for the Public Housing Program. Section 508 generally is not yet effective, except that the establishment of separate public housing and Section 8 income units in Rockland County, New York, is effective immediately. HUD's Notice PD&R 98–04, issued November 23, 1998, implemented this provision for Rockland County, New York, and provided the relevant income limits. (This information may also be found under ''income limits'' at http//www.huduser.org/data/factors.html.)

HUD will provide implementation instructions for the QHWRA's revised mandatory earned income disregard for public housing residents, effective October 1, 1999, at a later date. The current 18-month disregard for earned income of public housing residents in training programs (see 24 CFR 5.607(c)(8)(i) and (v) and (c)(13)) continues in effect for families who:

(1) Enroll in such programs before October 1, 1999; and

(2) Continue to meet the requirements for receiving the income disregard.

Action Guidance for Section 8 programs. The income limits referenced in the Action Guidance for Public Housing for Rockland County, New York, are applicable to the Section 8 programs.

*Section 509—Family Self-Sufficiency (FSS) Program in the Public Housing and Tenant-Based Section 8 Programs.* Section 509 amends section 23 of the USHA and, as amended, allows PHAs to reduce their family self-sufficiency obligation (mandatory minimum program size, prior to any reductions previously approved by HUD) by one family for each FSS graduate fulfilling the family's contract of participation obligations on or after October 21, 1998. Additionally, the QHWRA provides that the minimum FSS program size will not increase when a PHA receives incremental Section 8 funding and public housing units on or after October 21, 1998. The QHWRA continues the PHA's option to operate programs larger than the minimum FSS program size. The QHWRA also continues HUD's ability to authorize a reduced minimum program size. HUD is currently authorized to permit a PHA to operate a public housing or Section 8 FSS program that is smaller than the minimum program size if the PHA provides to HUD a certification that the operation of an FSS program of the minimum size is not feasible because of local circumstances (see 24 CFR 984.105(d)).

These provisions are effective upon enactment of the QHWRA (October 21, 1998).

Action Guidance for the Public Housing Program. The FSS provisions are effective upon enactment of the QHWRA (October 21, 1998). For purposes of the FSS minimum program size, ''receipt of incremental public housing units'' means reservation of funds to acquire or construct additional public housing units on or after October 21, 1998. The HUD Field Office will advise PHAs of these reservation dates.

Action Guidance for the Section 8 Certificate and Voucher Programs. The FSS provisions are effective upon enactment of the QHWRA (October 21, 1998). For purposes of the FSS minimum program size, ''receipt of incremental Section 8 funding'' means reservation of funds for the Section 8 certificate or voucher program (other than renewal funding and other funding excluded by HUD Notice PIH 97–45, issued September 3, 1997) on or after October 21, 1998. The HUD Field Office will advise PHAs of these reservation dates.

*Section 512—Public Housing Community Service and Public Housing and Tenant-Based Section 8 Family Self-Sufficiency Requirements. Public Housing Community Service Requirements.* Section 512 amends section 12 of the USHA and adds new subsections (c) through (g). Subsection (c) of section 12 of the U.S. Housing Act of 1937 (USHA) imposes a requirement on adult public housing residents, with important exceptions, to participate for at least 8 hours per month in community service or economic self-sufficiency program. In some circumstances, PHAs must refuse to renew a resident's 12-month lease for failure to satisfy this requirement.

Action Guidance for the Public Housing Program. Subsection (c) is not yet effective, but will be effective October 1, 1999. HUD will issue implementing instructions and guidance before October 1, 1999. PHAs should begin considering how community service requirements may be fulfilled by residents, including the potential use of qualified resident councils or other qualified entities either as agents for program administration or providers of opportunities for fulfilling the community service requirement. The provision requiring 1-year public housing leases, automatically renewable except for failure to comply with community service requirements, also is not yet effective. HUD notes, however, that such leases may be self-renewing without an annual signing process, as long as the leases are terminable for failure to meet the community service obligation under the circumstances defined in the statute. Again, HUD will issue additional guidance at a later date, as well as amend HUD's applicable regulations.

*Treatment of Income Changes Resulting from Welfare Program Requirements.* New subsection 12(d), Treatment of Income Changes Resulting From Welfare Program Requirements, is effective immediately, for public housing residents and tenant-based Section 8 certificate and voucher families whose welfare assistance is reduced specifically because of fraud or failure to participate in an economic self-sufficiency program or comply with a work activities requirement. Such families must not have their public housing rent or Section 8 contribution to rent reduced based on the benefit reduction. The prohibition on reduction of public housing rent or Section 8 tenant-based assistance contribution is applicable only if the welfare reduction is neither the result of the expiration of a lifetime time limit on receiving benefits, nor a situation where the family has complied with welfare program requirements but cannot obtain employment (e.g., the family has complied, but loses welfare because of a durational time limit such as a cap on welfare benefits for a period of no more than two years in a five year period). Any PHA receiving a request for income reexamination and rent reduction predicated on a reduction in tenant income from welfare may deny the request only after obtaining written verification from the welfare agency that the family's benefits have been reduced because of noncompliance with economic self-sufficiency program or work activities requirements or because of fraud.

Action Guidance for the Public Housing Program. Although this subsection (d) is effective immediately, PHAs should note that this subsection is subject to some procedural limitations. PHAs must first take the necessary procedural steps so that this rent policy change will be binding on affected families, and PHAs must take these steps expeditiously. Section 12(e) requires incorporation into leases of the provisions of this subsection (d). The PHA also must notify affected residents that they have the right to administrative review through the PHA's grievance procedure.

PHAs are to make best efforts to enter into cooperation agreements with local welfare agencies, both to obtain the necessary information regarding welfare sanctions and to target economic self-sufficiency and other appropriate services to public housing residents and Section 8 tenant-based certificate and voucher families. PHAs are encouraged to pursue the targeting of such services aggressively in these cooperation agreements, and are reminded that the QHWRA amends the public housing management assessment program to include the extent to which the public housing agency coordinates, promotes or provides effective programs and activities to promote the economic self-sufficiency of public housing residents (effective in fiscal year 2000).

Action Guidance for Section 8 Tenant-Based Certificate and Voucher Programs. The guidance provided in the Action Guidance for Public Housing pertaining to the policies on cooperation agreements is applicable to the Section 8 tenant-based certificate and voucher programs. Rather than incorporating the provisions of subsection (d) into leases, PHAs must revise operating procedures as needed to effectuate this provision. The PHA also must notify affected families that they may use the informal hearing procedure under 24 CFR 982.555(a)(i).

*Section 513—Public Housing and Section 8 Income Targeting.* Section 513 amends section 16 of the USHA to establish, among other things, public housing deconcentration requirements, annual requirements for admitting families with incomes below thirty percent (30%) of area median income, and related income targeting requirements.

*Prohibition of Concentration of Low-Income Families in Public Housing (Deconcentration of Poverty).* The QHWRA requires PHAs to submit with their annual public housing agency plans an admissions policy designed to provide for deconcentration of poverty and income mixing, by bringing higher income tenants into lower income public housing projects and bringing lower income tenants into higher income public housing projects.

Action Guidance for the Public Housing Program. Through this Notice and consistent with the immediate effective date of this section of the USHA, HUD is requiring PHAs to begin implementing this public housing deconcentration policy. PHAs must immediately develop this policy. Within 120 days of this Notice or a longer time period if HUD grants an extension for good cause, the PHA's Board of Commissioners must pass a resolution indicating that any necessary changes have been made in the PHA's admissions policy. PHAs must keep this Board resolution on file for possible HUD review. While PHAs must take any necessary actions now to have an

appropriate policy in place, the admissions policy to promote deconcentration of poverty also will be part of the PHA plan process from its inception. Material describing the deconcentration requirements more fully is included in the PHA plan interim rule published elsewhere in today's **Federal Register**.

**Income Targeting Requirements**

*(1) Public housing.* With respect to income targeting, the general rule is that in each fiscal year, at least 40 percent of families admitted to public housing by a PHA must have incomes that do not exceed 30 percent of area median. The ''fungibility'' provisions allow a PHA to admit less than 40 percent of families with incomes below 30 percent of median (''very poor families'') in a fiscal year, to the extent the PHA has provided more than seventy-five (75) percent of newly available vouchers and certificates (including those resulting from turnover) to very poor families. Thus, the provision is called ''fungibility'' because to a limited extent, it makes the targeting requirements in public housing and tenant-based assistance interchangeable or fungible. There are three further limitations on a PHA's use of fungibility. Fungibility ''credits'' only can be used to drop the annual requirement for housing very poor families below 40 percent of newly available units in public housing, by the lowest of the following amounts:

(a) The number of units equivalent to ten (10) percent of the number of newly available vouchers and certificates in that fiscal year; or

(b) The number of units that (i) are in projects located in census tracts having a poverty rate of 30% or more, and (ii) are made available for occupancy by and actually occupied in that year by very poor families; or

(c) The number of units that cause the PHA's overall requirement for housing very poor families to drop to 30% of its newly available units.

Action Guidance for the Public Housing Program. PHAs should promptly make any needed adjustments in admissions policies, subject to the usual procedures, to ensure compliance.

The administration of income targeting should be facilitated if the requirements are applied on the same annual basis as the fiscal year of the PHA's public housing or tenant-based assistance program. To allow application of the requirements in this manner, the income targeting requirements will be applied on a pro rata basis to the remainder of the PHA's current fiscal year starting with April 1, 1999 to the end of the current fiscal year, and thereafter by applicable fiscal year. Alternatively, a PHA may apply the targeting initially to the period starting April 1, 1999 and ending at the conclusion of the next PHA fiscal year.

*(2) Section 8 tenant-based assistance.* With respect to Section 8 tenant-based assistance, for a PHA in each fiscal year, not less than 75% of its new admissions to the program must have incomes at or below 30% of the area median income. The income limits based on 30 percent of median are listed in HUD's 1999 income limits publication which is posted on the internet at http//www.huduser.org/data/factors.html. Other admissions must comply with eligibility limits under the current regulations (24 CFR 982.201(b)) and law.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. The income targeting applies to admissions in each PHA fiscal year. PHAs may set the initial period in the same manner as is provided above for public housing.

If an award of vouchers to prevent or ameliorate the effects of displacement (for instance, tenant-based assistance provided for a preservation prepayment or when an owner opts out of the Section 8 program) would interfere with a PHA's compliance with the income targeting requirements, the PHA may request that HUD approve a different targeting requirement (which may take effect upon issuance of the tenant-based assistance in question) and the PHA then may include the HUD approved requirement in the PHA's next annual plan.

*(3) Section 8 project-based assistance.* For Section 8 project-based assistance (including moderate rehabilitation and project-based certificates), not less than 40% of new admissions to a specific project must have incomes at or below 30% of the area median income. Other admissions to a specific project must be at or below 80% of the area median, with any HUD-instituted modifications for relatively low income or high income areas as discussed above. In addition, the previously existing nationwide targeting requirements for families with incomes at or below 50% of area median income in pre-1981 and post-1981 projects continue to be applicable (see regulatory citation below). Income targeting requirements do not apply to project-based assistance made available to prevent or ameliorate the effects of displacement.

Initial Guidance for Section 8 Project-Based Assistance. The following regulations will continue to apply:

(1) Income limits for admission (24 CFR 5.607);

(2) Anti-skipping for the purpose of selecting a relatively higher-income family (24 CFR 5.410(e)(2)); and

(3) Ability to use worker preferences subject to the antiskipping requirement (24 CFR 5.415(b)(1); provisions of 24 CFR 5.415(b)(1) that reference to federal preferences may be disregarded since federal preferences have been repealed).

In addition, owners (other than project-based certificate and moderate rehabilitation owners) will have to modify their tenant selection plans to conform to statutory and program requirements. Owners' tenant selection plans should include how they will apply the new income targeting requirements to ensure that not less than 40 percent of the units which become available each year will be leased to families with income that does not exceed 30 percent of the median income at the time they commence their lease.

HUD will be issuing additional guidance in a notice in the near future.

*Section 514—Repeal of Federal Preferences in the Public Housing and Section 8 Programs.* With respect to preferences, the QHWRA provides:

(1) Permanent repeal of Federal preferences;

(2) Permanent repeal of the right of certain public housing residents to retain federal preference status on the Section 8 certificate and voucher waiting list;

(3) Authorization for local preferences; and

(4) Elimination of the previous statutory preference for the admission of elderly, disabled and displaced persons before other single persons in the public housing and Section 8 programs (accomplished by section 506 rather than section 514).

Action Guidance for Public Housing, Section 8 Certificate and Voucher and Moderate Rehabilitation Programs. The QHWRA permanently repeals federal preference requirements for the public housing and Section 8 programs. PHAs are no longer required to select families from their waiting lists using the federal preferences or provide the singles preference. (PHAs may opt to continue the singles preference and one or more of the former federal preferences.) HUD urges PHAs to consider adopting admission preferences for victims of domestic violence.

PHAs should promptly make any needed adjustments in admissions policies, subject to the usual procedures to ensure that the preferences they use will result in compliance with public housing deconcentration and public

housing and Section 8 income targeting requirements.

Section 514 also provides that local preferences may be established taking into account generally accepted data sources, including any information obtained during the opportunity for public comment on the PHA plan and in the development of the local comprehensive housing affordability strategy (consolidated plan). Since to date there has not been a PHA plan process, full compliance with this statutory section is not possible with respect to local preferences that currently exist in these programs. Because there is no indication in the QHWRA that Congress intended to disrupt existing local preferences, existing local preferences may remain without further immediate PHA action or may be altered in the manner authorized before enactment of the QHWRA. Both existing and proposed local preferences, however, must comply with the new requirements for establishing preferences and the PHA plan process that will commence in 1999. The QHWRA permanently eliminated in the public housing and the Section 8 programs, the previous statutory preference for the admission of elderly, disabled and displaced persons before other single persons. PHAs may revise occupancy policies to reflect this change.

Irrespective of these statutory changes, other public housing selection preference regulations which are unrelated to these changes continue to apply. In addition, the following regulations remain applicable to tenant-based assistance: 24 CFR 982.204(d) prohibiting the order of admission from the tenant-based waiting list based on family or unit size; the prohibited admissions criteria in 24 CFR 982.202(b); and approval of any residency preferences in accordance with 24 CFR 982.208 and 24 CFR 5.410(h). The nondiscrimination requirement for public housing residents with respect to admissions to tenant-based assistance also continues to apply (Section 8(s) of the USHA).

Action Guidance for Other Section 8 Project-Based Programs. The QHWRA permanently repeals federal preference requirements for Section 8 newly constructed or substantially rehabilitated housing and other project-based Section 8 programs. Owners are no longer required to select families from their waiting lists using the federal preferences or provide the singles preference. Owners should make any changes needed to comply with income targeting requirements. Any changes in an owner's tenant selection system must be consistent with the Affirmative Fair Housing Marketing Plan approved by HUD. HUD's multifamily housing occupancy handbook, 4350.3, specifies that the tenant selection system must consist of a written plan, be equitable and guard against discrimination. Where an owner elects to make changes in the tenant selection system, HUD strongly encourages the owner to provide appropriate notification of implementation to applicants on the waiting lists and other interested persons (e.g., by newspaper publication or notice to applicants).

**Subtitle B of the QHWRA—Public Housing**

*Section 519—Public Housing Capital and Operating Funds.* Section 519 amends section 9 of the USHA to provide for the establishment of capital and operating funds with new formulas. Only a few parts of this statutory section are effective immediately. They are as follows:

*Use of capital or operating funds by small PHAs.* New subsection 9(g)(2) of the USHA, added by section 519 of the QHWRA, allows a PHA with less than 250 dwelling units (small PHAs), to use capital or operating funds for any eligible capital or operating expense if: (1) the PHA is not designated troubled; and (2) the PHA operates its public housing in a safe, clean and healthy condition, as determined by HUD. Until enactment of the QHWRA, these PHAs have been receiving capital funds for specific purposes under the competitive Comprehensive Improvement Assistance Program (CIAP). New subsection 9(a) of the USHA, however, provides for a merger of remaining CIAP funds into the Capital Fund on October 1, 1999.

With the enactment of new subsection 9(g)(2) and the pending merger of funds, HUD construes Congressional intent to be that small, non-troubled PHAs may immediately use any CIAP or operating funds for capital or operating purposes. Because CIAP funds were obtained competitively based on representations of need, HUD would expect PHAs' current use of CIAP funds for operating purposes to be judicious; for example, to address an emergency need.

HUD reserves the right to determine, through its independent inspections or other monitoring, that a PHA is ineligible for the flexible use of capital and operating funds of subsection 9(g)(2) of the USHA because the PHA is not operating and maintaining its public housing in a safe, clean and healthy condition. HUD may notify a PHA of this determination. If a small PHA does not receive this notification from HUD, the PHA may use the flexibility of subsection 9(g)(2) unless the PHA's last public housing management assistance program (PHMAP) assessment contained a grade lower than ''E'' on Indicator #5, Component #1.

*Action Guidance.* PHAs using this flexible funding authority must retain the necessary accounting to indicate the sources and uses of all funds, including their origination as capital (CIAP) or operating funds (i.e., their accounting for capital funds must indicate any amount of funds used for operating expenses). PHAs would continue to draw down CIAP funds under the LOCCS against the program grant authorized by the applicable annual contributions contract (ACC) amendment. PHAs also may draw down capital funds only under the current federal rules that require projected expenditure of the funds within three days. PHAs, therefore, cannot draw down capital funds directly to establish or augment reserves, or indirectly for this purpose by retaining larger than a reasonably sized operating reserve.

*Penalties for slow obligation or expenditure of capital funds.* New subsection 9(j) of the USHA provides for penalties for slow obligation or expenditure of capital funds. While this subsection is generally not yet effective, the QHWRA states that capital funds made available to a PHA for fiscal year 1997 or prior fiscal years must be obligated by the PHA not later than September 30, 1999.

The QHWRA also states that a PHA shall spend any assistance received under section 9 of the USHA not later than 4 years (plus the period of any extension approved by the Secretary in accordance with new section 9(j)(2)) after the date on which funds become available to the agency for obligation.

Action Guidance. PHAs must take all necessary steps to meet the September 30, 1999 deadline.

*Authority to NYCHA to Expend Funds for Asthma Reduction.* New subsection 9(n)(2) and (3) of the USHA allow the New York City Housing Authority to expend, from funds otherwise available to it, up to $500,000 annually for asthma reduction and $600,000 annually for a comprehensive plan to address the need for services for elderly residents, commencing in FY 1999.

*Ceiling Rents.* Subsection 519(d) of the QHWRA provides transitional authority to implement ceiling rents, before the implementation of the new funding formulas.

Action Guidance. During this transition period, PHAs may establish or retain ceiling rents allowed under all preexisting laws, including annual

appropriations laws and the Balanced Budget Downpayment Act, I. In addition, PHAs may adopt and apply ceiling rents that reflect the reasonable market value of the housing, but are not less than 75% of the monthly cost to operate the PHA's housing (100% for housing predominantly for elderly or disabled families, or both) and may include the costs of monthly deposit for a replacement reserve. HUD will define ''predominantly'' as at least 80 percent occupancy by such families. The latter authorization may be used immediately and without HUD approval, provided that PHAs keep reasonable documentation that the ceiling rents reflect reasonable market value and are not lower than the statutorily-required floors.

*Transitional Funding Before Implementation of New Capital and Operating Formulas.* Subsection 519(e) provides requirements for transitional funding until the new capital and operating formulas are implemented. For FY 1999, HUD will provide funds to PHAs in accordance with prior law (unless HUD provides further notification regarding the distribution of capital funds). With respect to operating subsidy, this subsection specifically provides that ceiling rents and the optional earned income disregards authorized by the past several appropriations acts continue to be treated as provided under prior law.

Action Guidance. In summary, prior law holds PHAs financially harmless for adoption of authorized ceiling rents, but allows the optional earned income disregards at PHAs' initial financial risk. This treatment will be continued until a new formula is adopted.

*Adoption of Rental Amount Other than Ceiling Rent or Optional Earned Income Disregard.* Subsection 519(e) also states that during the transition period, if a PHA adopts a rental amount other than a ceiling rent or an optional earned income disregard authorized by the prior appropriations laws, which is less than the amount otherwise required to be charged (typically 30% of a family's adjusted income), the formula shall not be adjusted to compensate the PHA for this rent reduction.

Action Guidance. HUD interprets this provision to authorize PHAs to begin immediately, subject to appropriate local process, to charge lower amounts than those otherwise required (or allowed under ceiling rent or previously existing optional earned income disregard authority; see the immediately preceding paragraph), as authorized by section 523 of the QHWRA (typically, ''up to'' 30% of a family's adjusted income; new section 3(a)(2)(B)(ii) of the USHA). PHAs may take this step, prior to adoption of a new formula, for purposes PHAs deem appropriate such as promotion of resident self-sufficiency, even though the rest of section 523 is not yet effective. This would be done, however, at a PHA's financial risk. A PHA that chooses to implement this policy would need to submit rent rolls for the purpose of FY 1999 subsidy calculations that do not reflect the newly imposed rent decrease or disregard. Instead, such rent rolls must presume that the PHA is charging the rent otherwise required or allowed by law.

*Section 520—Total Development Costs.* Section 520 amends the definition of ''development cost'' in section 3(c)(1) of the USHA to exclude from this definition the costs associated with demolition or remediation of environmental hazards associated with public housing units that will not be replaced on the project site, or other extraordinary site costs as determined by HUD.

Section 520 also amends 6(b) of the USHA to add a new subsection 6(b)(3) which provides that in calculating the total development cost of a project under section 6(b)(2), HUD shall consider only capital assistance provided by HUD to a PHA that are authorized for use in connection with the development of public housing and shall exclude all other amounts, including amounts provided under: (1) The HOME Investment Partnerships Program; or (2) the CDBG Program.

Action Guidance. HUD will issue a separate notice in the near future to impose total development cost requirements that are consistent with the changes made by this section.

*Section 522—Repeal of Public Housing Modernization Fund.* Section 522 repeals section 14 of the USHA, but makes clear that before the implementation of the new capital formula, PHAs may utilize any authority under section 14(q) of the USHA, as amended. Section 14(q) of the USHA allows PHAs to use capital funds for public housing development and HOPE VI uses and allows mixed-finance public housing developments. (Section 201 of the FY 1999 HUD Appropriations Act clarified that such broader uses, but not operating expenses, are permissible uses of FY 1998 and 1999 funds. The ability for PHAs other than small PHAs to use capital funds partly for operating expenses does not become effective until Federal fiscal year 2000.) In addition, section 208 of the FY 1999 HUD Appropriations Act amended section 14(q) of the USHA to provide that such assistance may involve the drawdown of funds on a schedule commensurate with construction draws, for deposit into an interest-bearing escrow account to serve as collateral or credit enhancement for construction or rehabilitation bonds issued by a public agency.

*Section 523—Public Housing Family Choice of Rental Payment.* Section 523 amends section 3(a) of the USHA, and provides that each family can elect annually whether the rent payment is a flat rate or income based. Flat rents are set by a PHA at a rate based on the rental value of the unit. Income based rents are calculated on the level of a tenant's income, the basic calculation was not changed from the current law calculation of the higher of 10% of income, 30% of adjusted income, or the housing portion of welfare, where applicable. The current law amounts for income-based rents, however, were changed from required amounts to maximum amounts a PHA can charge.

Action Guidance. Although this section is not effective now except as indicated in the discussion above of section 519(e), PHAs should begin the process of setting flat rents as required by new section 3(a)(2)(B)(i) of the USHA. These flat rents are to be based on the rental value of the unit, which HUD interprets to be the same as the reasonable market value of the unit authorized for ceiling rents. HUD will provide further guidance, but PHAs should anticipate that the rent choice authorized by section 523 would have to be offered to families admitted or subject to recertification after October 1, 1999.

*Section 524—Occupancy by Police Officers and Over-Income Families in Public Housing.* Section 524 amends section 3(a) of the USHA to provide that PHAs may allow police officers to reside in public housing. Under this section, small PHAs may also rent units to over-income families on a month-to-month basis, in accordance with statutory requirements, if there are no eligible families applying for assistance for that month, provided that the over-income family agrees to vacate (with at least 30 days notice) when the unit is needed for an income-eligible family.

Action Guidance. This section is effective immediately, but the provision pertaining to police officers is subject to inclusion in the PHA plan. Because current statutory provision is not repealed during this fiscal year, HUD will allow occupancy by police officers under the terms of current law until the PHA plan requirement can be implemented.

With respect to the housing of over-income families where other families

are not available to small PHAs, a PHA must publish a 30-day notice of available units in at least one newspaper of general circulation.

*Section 530—Housing Quality Requirements.* Section 530 amends section 6 of the USHA to add a new subjection (f) which requires annual contributions contracts to include a requirement that a PHA maintain its public housing units in compliance with safety and habitability standards specified by HUD. In developing these standards, HUD is to make them to the greatest extent practicable, consistent with the housing quality standards under the Section 8 voucher program. This section also requires PHAs to conduct annual inspections for each project to determine whether the units comply with the standards.

Action Guidance. HUD's new Public Housing Assessment System (PHAS), which was established by final rule issued on September 1, 1998 (63 FR 46596), utilizes new uniform physical condition standards that are consistent with the housing quality standards currently used in the Section 8 tenant-based assistance program. See also HUD's Uniform Physical Condition Standards final rule, published on September 1, 1998 at 63 FR 46566. PHAs are currently required by statute to conduct an annual inspection of their projects.

*Section 531—Demolition and Disposition of Public Housing.* Section 531 amends section 18 of the USHA and provides that PHAs may demolish and dispose of projects upon application to HUD when the housing is determined obsolete and modifications are not cost-effective. This statutory section completely revises public housing demolition and disposition requirements, and also repeals one-for-one replacement requirements. The immediate effective date of this statutory section raised two threshold issues for HUD to consider.

First, how should HUD treat the pipeline of demolition and disposition applications received prior to October 21, 1998, and those received after that date but prior to the effectiveness of the applicable regulations and processes?

Second, how should HUD treat the new requirement found in amended section 18 of the USHA—that the public housing agency has specifically authorized the demolition or disposition in its PHA plan and has certified that the actions contemplated in the PHA plan comply with this section?

HUD believes that it is consistent with Congressional intent not to interrupt the processing of applications.

Action Guidance. 1. *Pending Applications; New Applications.* In view of the Congressional intent and to expedite the processing of demolition and disposition applications during this period prior to submission and approval of PHA plans under the new law, demolition/disposition applications will be reviewed and processed in two groups. Group 1 are those applications received at HUD's Special Applications Center (SAC) on or before October 21, 1998, the date the QHWRA was signed into law. Group 2 are those applications received at the SAC after October 21, 1998.

A. *Group 1 Applications.* Applications in Group 1 will generally be reviewed and approved in accordance with 24 CFR part 970 which was in effect at the time of the application submission. However, if the SAC staff identifies deficiencies in a Group 1 application, the PHA has the option at that time to either (a) correct the deficiencies in accordance with 24 CFR part 970 or (b) withdraw its application and resubmit it at a later date based on HUD's guidance as identified in this Notice for implementing section 531 of the QHWRA. In addition, HUD will implement four specific provisions of the QHWRA for all pending applications in Group 1, as follows:

- The one-for-one replacement requirement is eliminated;
- PHAs that request to demolish the lesser of 5 units or 5 percent of the units in the PHA's inventory in a 5 year period, *and* where the vacant space will be used for meeting the service or other needs of the public housing residents *or* the units to be demolished are beyond repair, may demolish without submitting an application and requesting HUD approval (see paragraph 2 below on ''De Minimis Exception for Demolition'');
- Waiver of payment of debt (modernization or development debt) for bonded developments;
- Elimination of the requirement to make an offer to sell the property proposed for demolition to the resident organization where the PHA is requesting to *demolish* property; in view of the QHWRA's elimination of this requirement with respect to demolition, the purchase option will not be deemed ''appropriate'' for such property under the terms of section 18(b)(1) of the USHA before its amendment by the QHWRA.

B. *Group 2 Applications.* Under Section 18(a)(3) of the revised USHA, in order for a demolition or disposition application to be approved, a PHA must have ''specifically authorized the demolition or disposition in the public housing agency plan, and has certified that the actions contemplated in the public housing agency plan comply with this section.''

HUD's interim rule on PHA plans, published elsewhere in today's **Federal Register**, provides further guidance on the fulfillment of this requirement for demolition/disposition. In brief, HUD's rule allows the submission of interim PHA plans covering demolition or disposition, so that a PHA may receive a timely approval which otherwise may not occur because of the initial schedule for submitting PHA plans. A separate notice to be issued by HUD's Office of Public and Indian Housing will describe the procedures that govern a demolition or disposition application under section 18 of the USHA as amended by the QHWRA, in addition to those procedures and requirements related to the PHA plan, before conforming changes are made to the applicable regulations.

2. *De Minimis Exception for Demolition.* PHAs proposing to demolish not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned by the PHA over a 5-year period, and that plan to use the space for meeting the service or other needs of the public housing residents or are demolishing units that are beyond repair, may demolish without submitting an application. PHAs using the de minimis exception are required to complete Sections 1—5 of HUD Form 52860. HUD will use this information to track the demolition in HUD's data system for purposes such as determination of subsidy amounts; HUD will not use this information to determine whether a PHA can demolish the units. Once the demolition is completed, the PHA must report the actual date of demolition to the HUD Field Office. PHAs should note that before committing any funds for or proceeding with demolition that will be funded or reimbursed with USHA funds, the PHA must receive HUD approval of a Request for Release of Funds to the extent required in accordance with 24 CFR part 58.

3. *Uniform Relocation Act.* Section 531(g) of the QHWRA provides that the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA) shall not apply to activities under section 18 of the USHA. The URA, however, continues to apply to:

(a) Any person displaced before October 21, 1998 (the date of enactment of the QHWRA);

(b) Any person displaced as a result of HUD's approval of a demolition before October 21, 1998;

(c) Any person displaced as a result of a demolition that is part of a HOPE VI project (demolitions under HOPE VI are subject to the URA because they are not subject to section 18 of the USHA);

(d) Any person displaced as a result of a demolition or disposition that occurs from an assessment of a project for mandatory conversion to vouchers under section 202 of the FY 1996 HUD Appropriations Act or section 537 of the QHWRA or of voluntary conversion to vouchers out under section 533 of the QHWRA. (Demolitions under section 202 of the FY 1996 HUD Appropriations Act are subject to the URA because they are governed by the law as in effect before enactment of the QHWRA and because they are not subject to section 18 of the USHA. Demolitions under section 537 of the QHWRA are subject to the URA because these demolitions are not subject to section 18 of the USHA); and

(e) Any person displaced as a result of the acquisition of the site for a project receiving Federal financial assistance.

*Section 535—Demolition, Site Revitalization, Replacement Housing, and Tenant-Based Assistance Grants for Public Housing Projects.* Section 535 amends section 24 of the USHA and provides the continued authority for the HOPE VI program, and establishes application selection and grant requirements.

Action Guidance. Because this section is effective immediately, HUD's FY 1999 HOPE VI Notice of Funding Availability will reflect the terms of this section.

*Exemption for severely distressed public housing demolished in accordance with a revitalization plan.* New section 24(g) of the USHA exempts severely distressed public housing demolished in accordance with a revitalization plan from the demolition requirements of section 18 of the USHA. However, any such housing disposed of and any housing developed to replace the demolished housing are subject to section 18 of the USHA.

Action Guidance. HOPE VI revitalization plans approved after October 21, 1998 (the date of enactment of the QHWRA) will receive this exemption.

*Section 537—Required Conversion of Distressed Public Housing to Tenant-Based Assistance.* Section 537 adds a new section 33 to the USHA and repeals its forerunner provision in the FY 1996 HUD Appropriations Act. A component of each PHA plan is its 5-year plan for the removal of public housing units identified as distressed from the public housing inventory and the ACC. This plan for removal of units is subject to review by HUD.

Action Guidance. While this section is not yet effective, the language of this section clarifies that public housing developments identified by HUD or a PHA for conversion or for assessment of whether conversion is required under the preexisting law and regulations shall remain subject to that law and regulations (Section 202 of the VA/HUD/Independent Agencies Appropriations Act of 1996 and implementing regulations at 24 CFR part 971).

**Subtitle C of the QHWRA—Section 8 Rental and Homeownership Assistance**

*Section 547—Section 8 PHA Administrative Fees for the Certificate, Voucher and Moderate Rehabilitation Programs.* Section 547 amends section 8(q) of the USHA and changes the prior administrative fee system slightly, by increasing the fee for the first 600 certificate, voucher and moderate rehabilitation units administered by a PHA from 7.5% to 7.65% of a defined base amount beginning October 1, 1998. HUD will issue a separate notice indicating how the increase in FY 1999 administrative fees is to be paid.

Action Guidance for the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. A Senate colloquy on the QHWRA legislation indicated that HUD should allow administrative fee adjustments to cover any necessary additional expenses for serving persons with disabilities fully, such as additional counseling (housing search assistance) expenses (Congressional Record of October 8, 1998, p. S11840). PHAs that have undertaken or will undertake, such expenses may document the services provided, describe the expenses and propose administrative fee adjustments to HUD.

*Section 548—Law Enforcement and Security Personnel in Project-Based Section 8 Housing.* To increase security, Section 548 provides that Section 8 assistance may be provided to police officers and other security personnel who are not otherwise eligible for assistance.

Action Guidance for the Section 8 Project-Based Certificate, Moderate Rehabilitation and Other Section 8 Project-Based Programs. Section 548 is applicable to FY 1999 and following fiscal years, and is applicable to Section 8 moderate rehabilitation, project-based certificate, new construction, substantial rehabilitation and other project-based Section 8 projects. Owners must apply to the HUD Field Office for authorization to house over-income police officers and other security personnel in the assisted units. Until otherwise notified, the owner application needs to include a statement demonstrating the need for increased security at the project, and a description of the proposed gross rent for the unit and any special conditions for occupancy. Processing instructions will be provided to HUD Field Offices.

*Section 549—Advance Notice to Tenants of Expiration, Termination, or Owner Nonrenewal of Section 8 Assistance Contract.* Section 549(a) of the QHWRA amends section 8(c)(9) of the USHA to make permanent the tenant-based notice and endless lease provisions which had been effective through FY 1998 and to change the project-based contract termination notice requirement from 6 months to 1 year. Section 549(a) also eliminates the notice and rent adjustment provisions of sections 8(c)(8) and (10).

Section 549(b) amends section 8(c)(9) to require the project-based 1-year notice to include information about the possibility of nonrenewal of assistance (when the owner seeks renewal but appropriations are uncertain) and the resulting protections. Section 549(b) also requires a 6-month notice to HUD and tenants when the owner agrees to a 5-year renewal that is subject to the availability of appropriations.

Section 549(c) amends section 514(d) of the Multifamily Assisted Housing Reform and Affordability Act that addresses the mortgage restructuring, to require that the owner who is not renewing project-based assistance to give notice of the termination in addition to the 1-year notice at least 120 days before termination.

*1. Tenant-based assistance.* Subsection (a) of section 549, Permanent Applicability of Notice and Endless Lease Provisions, is effective October 21, 1999. That subsection makes permanent the suspension in recent annual appropriations acts of the 90-day owner termination notice to HUD and endless lease term with respect to the tenant-based Section 8 programs. Of course, landlords still must terminate leases and conduct evictions in accordance with other applicable laws.

Action Guidance for Section 8 Tenant-Based Certificate and Voucher Programs. PHAs should advise interested owners who are participating or who are potential participants in the tenant-based assistance programs that the 90-day owner termination and endless lease term requirements have been permanently eliminated. Additional implementation guidance was issued December 18, 1998 in Notice PIH 98–64.

*2. Project-based assistance.* Subsection (a) of section 549 also

requires owners of projects receiving project-based section 8 assistance to provide not less than one-year written notification to tenants and HUD of the expiration or termination of the contract. Note that section 8(c)(8) of the USHA which required owners to provide a 90-day notice to the tenants of any rent increase is repealed.

Action Guidance for Section 8 Project-Based Certificate, Moderate Rehabilitation and Other Project-Based Programs. Owners who gave notice prior to the enactment of the QHWRA (October 21, 1998) are covered under the 180-day notice requirement. Owners who give notice to tenants and HUD on or after October 21, 1998 must fulfill the entire one-year notification requirement. HUD's Office of Housing will issue further guidance in the near future. Guidance concerning the Section 8 Moderate Rehabilitation Program notice requirements is found in Notice PIH 98–62, issued December 15, 1998.

*Section 551—Funding and Allocation (of Public Housing and Section 8 Funds).* Section 551 amends section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439) which section addresses applications for housing assistance under the USHA or section 101 of the Housing and Urban Development Act of 1965. Section 551 most importantly repeals restrictions on funding allocations related to an obsolete nonmetropolitan set-aside and notification to jurisdictions and solicitation of comments regarding certain funding awards.

Action Guidance for Public Housing and Section 8 Programs. This notice makes section 551 effective immediately. Local government comments with respect to affected PHA applications for Section 8 and public housing funds are no longer required.

*Section 554—Leasing to Voucher Holders.* This section immediately repeals the so-called ''take one, take all'' Section 8 tenant-based provision that has been suspended in recent annual appropriations acts.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. The intent of Congress was to make the tenant-based assistance program more attractive to private landlords and encourage participation. PHAs should make a concerted effort to inform the prospective owner community of this permanent change, particularly for marketing the tenant-based assistance program to owners of units in low-poverty areas.

*Section 555 and Section 545 [§ 8(o)(15)]—Section 8 Tenant-Based Homeownership Option.* These sections provide necessary additional flexibility for PHAs to use vouchers to increase homeownership.

Action Guidance for the Section 8 Tenant-Based Certificate and Voucher Programs. HUD will be providing further guidance in the near future.

**Subtitle D of the QHWRA—Home Rule Flexible Grant Demonstration (Public Housing and Tenant-Based Section 8 Programs)**

Subtitle D of the QHWRA adds a demonstration program in which eligible jurisdictions, typically units of general local government, could receive public housing and tenant-based assistance for up to five years to meet specified performance goals.

Action Guidance for Public Housing and Section 8 Tenant-Based Programs. While HUD may issue additional guidance later, any eligible jurisdiction wishing to participate in the demonstration may follow the statute's requirements and submit an application to the Assistant Secretary, Office of Public and Indian Housing. HUD will not approve such an application, however, unless the application presents a compelling case that the eligible jurisdiction's participation and proposal would achieve the goals of the statute (which include the underlying program management and performance goals of the public housing and tenant-based assistance programs) in a superior manner to continuation of program management with the affected PHA.

**Subtitle E of the QHWRA—Accountability and Oversight of Public Housing Agencies Administering the Public Housing and Section 8 Programs**

*Section 565—Expansion of Powers for Dealing with Public Housing Agencies in Substantial Default.* In addition to providing for an expansion of various powers to be exercised by HUD or receivers, this section requires HUD to petition for court-ordered receivership (or to implement an administrative receivership, in the case of PHAs with fewer than 1,250 public housing units) with respect to certain troubled PHAs. The troubled PHAs subject to that requirement are those that do not:

(1) Within one year of the later of the date of enactment of the Act or receiving notice of a ''troubled'' designation, improve their performance score by at least half of the difference between their most recent score and the score necessary to remove the troubled designation; and

(2) Within two years of the later of such dates, escape troubled designation.

Section 565(d) states that HUD may administer these amendments as necessary to assure its efficient and effective initial administration. The initial administration of this section is affected by two ongoing processes.

First, PHAs ordinarily receive performance scores throughout the calendar year after their staggered fiscal year ends. To meet the statutory requirement for PHAs that receive notice of a troubled designation after October 21, 1998, performance assessments will be scheduled specifically for years commencing with the beginning of the first quarter after receipt of that notice. For PHAs that were designated troubled before October 21, 1998, performance assessments will be scheduled specifically for years ending October 21, 1999, and if necessary, October 21, 2000. With respect to these assessments, which in most cases will not correspond to a PHA's fiscal year, HUD may utilize year-end financial information or the most recent resident satisfaction surveys where HUD determines that such use will reasonably reflect the PHA's situation as of the assessment date.

Second, PHAs have been receiving performance scores under the Public Housing Management Assessment Program (PHMAP), but commencing with PHA fiscal years ending September 30, 1999, will receive scores under the new Public Housing Assessment System (PHAS). Thus, in some instances, during the transitional year PHAS scores will have to be compared with PHMAP scores to determine whether the 50% improvement requirement has been met. Where HUD determines that the 50% improvement has not been met, but that this failure is attributable to the transition between PHMAP and PHAS, HUD will not seek or impose court or administrative receiverships based on that requirement. (HUD will have the information needed to make that determination, largely based on the ''management'' component of PHAS.) The requirement to escape troubled status within two years, however, will be imposed notwithstanding the transition from PHMAP to PHAS.

**Subtitle F—Safety and Security in Public and Assisted Housing**

*Section 575—Provisions Applicable Only to Public Housing and Section 8 Assistance.* Section 575 amends several subsections of section 6 of the USHA and contains a number of provisions concerning public housing and Section 8 applicant screening and subsidy termination for criminal activity. Except for subsection (e) of section 575, the provisions of section 575 are not yet applicable.

Action Guidance for the Public Housing Program. Subsection (e) of section 575, Obtaining Information from Drug Abuse Treatment Facilities, was effective October 21, 1998 and is applicable only to public housing. Any PHA that wishes to use the authority of this subsection to obtain information whether public housing applicants are currently using illegal controlled substances from drug abuse treatment facilities must follow the specific requirements of subsection (e).

**Subtitle G—Repeals and Related Provisions**

*Section 584—Use of American Products.* This section reflects Congressional intent that, to the greatest extent practicable, all equipment and products purchased with funds made available under the FY 1999 HUD Appropriations Act should be American made.

Action Guidance. In providing financial assistance under the FY 1999 HUD Appropriations Act or in entering into any contract with any entity using funds made available under the FY 1999 HUD Appropriations Act, HUD, to the greatest extent practicable, is to provide a notice that describes Congressional intent in this regard. HUD is bringing this matter to the attention of the readers of this notice and urges them to take appropriate action.

*Section 592—Use of Assisted Housing by Aliens.* This section removes the option of PHAs to elect not to comply with section 214 of the Housing and Community Development Act of 1980 (Restriction on Assistance to Noncitizens). This option was provided by the Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.L. 104–298, approved September 30, 1996). In its place, the QHWRA provides that PHAs, notwithstanding the requirement of section 214(h)(1), may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family. Section 214(h)(1) provides that ''No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) by the applicable Secretary or other appropriate entity.''

Action Guidance for Public Housing and Section 8 Certificate, Voucher, and Moderate Rehabilitation Programs. The amendments to section 214 made by the QHWRA essentially reinstate HUD's noncitizens regulations as they were in existence before the amendments made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The pre-1996 requirements did not require PHAs to affirmatively establish and verify eligibility of at least the individual or one family member before the individual or family may receiving financial assistance. Additionally, the pre-1996 requirements did not provide PHAs with the option not to comply with section 214. With the amendments made by QHWRA, PHAs must comply with section 214 except that they are not required to affirmatively establish and verify eligibility of at least one family member before providing financial assistance. PHAs, however, have the option to adhere to that requirement if they so choose.

In the event a PHA elected to opt out of compliance with section 214, the PHA may, but is not required to, immediately commence verification of eligibility of families for whom eligibility status under section 214 has not yet been undertaken. A PHA must, however, verify eligibility status in accordance with the requirements of section 214 and the regulations at 24 CFR part 5, subpart E, no later than the date of the family's annual reexamination.

*Section 597—Section 8 Moderate Rehabilitation Program.* In part, Section 597 establishes rules for determining contract rent levels at which expiring moderate rehabilitation contracts will be renewed.

Action Guidance for Section 8 Moderate Rehabilitation Program. PHAs must generally extend for one year the project-based HAP contracts for non-SRO, non-mark-to-market multifamily moderate rehabilitation projects at contract rents that are the lower of (1) current rents adjusted by HUD's operating cost adjustment factor, (2) comparable rents, or (3) FMR less any amounts allowed for tenant-purchased utilities. HUD Field Offices were provided information concerning moderate rehabilitation renewals on October 23, 1998; HUD provided further implementing guidance in Notice PIH 98–62 (HA), issued December 15, 1998.

*Section 599—Tenant Participation in Multifamily Housing Projects.* Section 599 of the QHWRA amends section 202 of the Housing and Community Development Amendments of 1978 to extend the rights of tenants to organize to include all projects receiving project-based Section 8 assistance (including moderate rehabilitation and project-based certificate projects) and to tenants receiving ''enhanced'' vouchers under the provisions of the Emergency Low Income Housing Preservation Act of 1987, or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, or the Multifamily Assisted Housing Reform and Affordability Act of 1997.

Action Guidance for Project-Based Section 8 and Enhanced Vouchers. HUD will issue rulemaking governing tenants' rights to organize at projects receiving project-based Section 8 assistance or enhanced vouchers in connection with preservation projects or restructuring projects (ELIHPA, LIHPRA and MAHRA).

*Section II—Certain Statutory Provisions That Require Rulemaking*

The following additional provisions of the QHWRA either require rulemaking for implementation by statute or HUD has determined in its review of the statutory provision that rulemaking is necessary for implementation. This list does not include conforming rules that simply amend existing HUD regulations to reflect the new statute. HUD may determine that other sections need rulemaking as the implementation process progresses. These sections will be identified in HUD's Semiannual Agenda of Regulations to be published in April 1999 as part of the Federal Government's Unified Regulatory Agenda.

*Section 511—Public Housing Agency Plan (for Public Housing and Section 8 Programs).* This section establishes a comprehensive planning process for PHAs—a 5-year plan and an annual plan update. The 5 year plan describes the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the next 5 years. The annual plan provides details about the PHA's immediate operations, residents, programs and services, and the PHA's strategy for handling operational concerns, residents concerns and needs, programs and services for the upcoming fiscal year.

Implementation Method. The QHWRA requires HUD to implement this section by issuing an interim rule no later than 120 days after enactment of the QHWRA; that is, by February 18, 1999. The interim rule must provide a 60-day public comment period. The QHWRA also requires HUD to solicit recommendations from (1) State or local PHAs, (2) public housing residents, and (3) other appropriate parties. The QHWRA also requires HUD to convene at least two public forums. The final rule, which must be issued no later than by October 21, 1999, must discuss the recommendations, public comments and HUD responses to the recommendations and comments.

Please note that the interim rule is published elsewhere in today's **Federal Register**.

*Section 515 —Joint Ventures and Consortia of Public Housing Agencies.* This section permits two or more PHAs to participate in a consortium to administer any or all of their housing programs. This section also permits a PHA, in accordance with its PHA plan, to form a subsidiary or joint venture to administer programs or provide supportive or social services. A consortium must operate in accordance with a consortium agreement and a joint PHA plan. The income generated by a subsidiary or joint venture must be used for low-income housing or to benefit the residents, and will not result in lower funding to the PHA unless the capital and operating fund formulas so provide.

Implementation Method. HUD has determined that proper implementation of at least the consortium provisions requires rulemaking.

*Section 519—Public Housing Capital and Operating Funds.* Section 519 creates two grants for funding public housing activities—the Capital Fund and Operating Fund. Assistance through these new funding mechanisms is to commence for FY 2000, except that HUD may extend the implementation of the Operating Fund allocation formula by up to six months if necessary. (Please see discussion of this statutory provision under Section I for those provisions of section 519 that are immediately effective.)

Implementation Method. The QHWRA requires HUD to develop allocation formulas for these funds through the negotiated rulemaking process.

*Section 526—Pet Ownership for Public Housing.* Section 526 permits a resident of public housing, as defined in new section 31 of the USHA, to have one or more pets in the unit if the resident maintains each pet responsibly in accordance with applicable State and local laws and with the PHA's policies stated in the PHA plan.

Implementation Method. The QHWRA provides that section 526 will take effect upon the effective date of regulations issued by HUD to carry out this section. The QHWRA also provides that HUD shall issue effective regulations after notice and opportunity to comment by the public.

*Section 533—Conversion of Public Housing to Vouchers; Repeal of Family Investment Centers.* Section 533 requires PHAs to perform a ''conversion assessment'' of each of its public housing projects to determine the relative benefit of converting to tenant-based assistance under the section 8 program.

Implementation Method. HUD has determined that proper implementation of section 533 requires rulemaking.

*Section 537—Required conversion of distressed public housing to tenant-based assistance.* Section 537 adds a new section 33 to the USHA and repeals its forerunner provision in the FY 1996 HUD Appropriations Act. A component of each PHA plan is its 5-year plan for the removal of public housing units identified as distressed from the public housing inventory. This plan for removal of units is subject to review by HUD.

Implementation Method. HUD has determined that proper implementation of section 537 requires rulemaking. See guidance in Section I of this Notice regarding continued applicability of prior law and regulations.

*Section 539—Mixed-Finance Public Housing.* Section 539 adds a new section 37 to the USHA authorizing development of projects financially assisted by private resources as well as public housing program funds.

Implementation Method. New section 37 provides that HUD shall issue such regulations as may be necessary to promote the development of mixed-finance projects.

*Section 545—Merger of Certificate and Voucher Programs.* Section 545 amends section 8(o) of the USHA to merge the Section 8 certificate and voucher programs.

Implementation Method. In general, the merger of certificates and vouchers is not yet effective. HUD will be issuing a rule that merges these two programs. Therefore, PHAs should continue to operate these programs as previously operated, except with respect to specific changes highlighted by this Notice or as otherwise notified by HUD. This includes assistance for families currently under lease and the provision of turnover or newly awarded assistance to new families.

*Section 556—Section 8 Renewals for Tenant-Based Certificate and Voucher Funds.* Section 556 amends section 8 of the USHA to add a new subsection (dd) and authorizes HUD to renew all expiring tenant-based contracts. New subsection (dd) directs HUD to establish an allocation baseline amount of assistance to cover the renewals, and to apply an inflation factor (based on local or regional factors) to the baseline.

Implementation Method. Section 556 requires HUD to issue a notice by December 31, 1998, and to develop final regulations through the negotiated rulemaking process.

Please note that elsewhere in today's **Federal Register** HUD has published for the benefit of the public the notice that was issued directly to PHAs on December 31, 1998.

*Section 559—Rulemaking and Implementation.* Section 559 provides for implementation of sections 545 through 558 and other provisions in title V that relate to the voucher program (most notably, the merger of the certificate and voucher programs) through ''such interim regulations as may be necessary'' and final regulations necessary to implement these provisions. This section also requires HUD to seek recommendations from various types of organizations on the implementation of sections 8(o)(6)(B), 7(B), 10(D) of the USHA and renewals of expiring tenant-based assistance. HUD is to convene not less than two public forums to seek such recommendations.

*Section 586—Amendments to Public and Assisted Housing Drug Elimination Act of 1990.* Section 586 amends the Anti-Drug Abuse Act of 1988 to include additional eligible activities and provide for more predictable fund distribution.

*Implementation Method.* The statute directs HUD to prescribe by regulation the criteria for establishing a class of PHAs that have urgent or serious crime problems, for which funds may be reserved under this program.

Please note that elsewhere in today's **Federal Register**, HUD is publishing an Advance Notice of Proposed Rulemaking to solicit public comments on HUD's proposed approach to this rulemaking.

**Section III—Future Guidance**

The QHWRA makes many significant changes to HUD's public housing and Section 8 programs. With many of the changes immediately effective, substantial responsibility is placed on PHAs and Section 8 owners to implement these changes promptly. HUD is committed to working closely with its public housing and Section 8 partners to make the changes in its public housing and Section 8 programs a success. The successful administration of the new programs created by the QHWRA or program changes made by the QHWRA benefits those most in need of these programs—low-income families. HUD welcomes comments from its program partners, and HUD will continue to provide additional guidance through direct notices to PHAs and Section 8 owners, additional **Federal Register** notices, or through other means that may be determined appropriate.

**Section IV—Findings**

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Dated: February 10, 1999.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 99–3731 Filed 2–17–99; 8:45 am]

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Federal Register

Thursday
February 18, 1999

Part V

# Department of Housing and Urban Development

**24 CFR Part 761**

**Public Housing Drug Elimination Program Formula Allocation; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 761**

**[Docket No. FR–4451–A–01]**

**RIN 2577–AB95**

## Public Housing Drug Elimination Program Formula Allocation; Advance Notice of Proposed Rulemaking

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This document announces HUD's intention to develop, through proposed rulemaking, a formula allocation funding for HUD's Public and Indian Housing Drug Elimination Program. HUD believes that formula funding, as opposed to competitive funding, provides a more timely, predictable and equitable allocation of funds. HUD solicits comments in advance of this rulemaking on a method, components of a method, or methods that would result in reliable and equitable funding to public housing agencies with drug elimination programs and ensure that this funding is allocated to agencies meeting certain performance standards.

**DATES:** Comment Due Date: March 22, 1999.

**ADDRESSES:** Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

**FOR FURTHER INFORMATION CONTACT:** Sonia Burgos, Director, Office of Crime Prevention and Security, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1197 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTAL INFORMATION:**

### Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, and these amendments include some important changes to HUD's Public Housing Drug Elimination Program (PHDEP). The amendments to the PHDEP include authorizing the Secretary to make renewable grants. Specifically, section 586(e)(6) provides for a new section (b) to be added to section 5125 of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11904). This new language provides as follows:

> An eligible applicant that is a public housing agency may apply for a 1-year grant under this chapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws, in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines appropriate.

Section 586 also provides that the Secretary of HUD may not provide drug elimination assistance to an applicant that is a public housing agency unless the agency will use the grants to continue or expand drug elimination activities, as in effect before October 1, 1998. The Secretary of HUD is to provide preference in funding to these public housing agencies, but this preference does not preclude selection by the Secretary of other meritorious public housing agencies that need funding to address urgent or serious crime problems.

Section 586 further provides that the Secretary of HUD shall, by regulation, issued after notice and opportunity for public comment, issue criteria for establishing a class of public housing agencies that have urgent or serious crime problems.

In Senate colloquy before passage of QHWRA, Senator Mack noted that the amendments made to the Public and Assisted Housing Drug Elimination Act of 1990 represent a significant improvement in the program. The Senator stated:

> The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.
>
> * * * [T]he intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with more urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty. (Congressional Record of October 8, 1998, S.11842)

Based upon the language of the statute and the Senate colloquy, HUD believes that the intent of Congress can best be carried out by a formula distribution of funds that covers both housing authorities with renewable grants and those with urgent or serious crime-related needs. The proposed formula however would not be applicable to statutory set-asides that specify other funding methods.

### This Advance Notice of Proposed Rulemaking

The proposed rule that HUD intends to issue will both establish the performance criteria required by section 586 of the QHWRA and provide the method of need-based formula funding. Therefore HUD solicits comments on the following issues and proposals pertaining to the methods of the need based formula in advance of issuance of the proposed rule. HUD recognizes that issues of performance will have a major effect on a formula system, and it is developing issues and positions for which it will seek comment in a proposed rule that combines both technical formula issues and performance issues in one funding system. HUD's preferences for the options provided are noted below. The location on the internet of results of a formula based on HUD's stated preferences is also noted below.

*A. How To Determine ''Renewable Agencies''—Options for Consideration*

Option A.1. Subject to ongoing performance reviews, include all housing agencies as renewable agencies that successfully competed for funding in FY 1998.

Option A.2. Subject to ongoing performance reviews and additional capacity requirements, include all housing agencies that successfully competed for funding in at least one of the following years: FY 1996, FY 1997 or FY 1998.

*HUD Preference.* HUD prefers Option 2. HUD believes that an agency that

successfully competed for funding between FY 1996 and FY 1998 and that meets performance standards has recently shown both need and capacity.

*B. How To Determine New Renewable Agencies with Urgent Needs—Options for Consideration*

Option B.1. Subject to ongoing performance reviews and subject to additional capacity requirements, include in a formula distribution a smaller number of housing agencies that have not been recently funded and that meet an established threshold of need of PHDEP funding.

Option B.2. Subject to ongoing performance reviews and subject to additional capacity requirements, include a smaller number of housing agencies that have not been recently funded and that make a case in a competition for a serious and urgent need for PHDEP funding.

*HUD Preference.* HUD prefers Option 1. HUD believes that a formula distribution method will be more timely and predictable than the competition provided in Option 2. (Since almost all large housing agencies would qualify as renewable agencies under Option A.2, housing agencies that would qualify as the new renewable agencies under the method of Option B.1 are generally small housing agencies.)

*C. How To Determine Funding for Renewable Agencies With Urgent Need—Issues for Consideration*

Option C.1. A subset of renewable agencies with urgent needs may be funded by creating a standardized threshold, based on the distribution of all housing agencies on a criterion such as the index of the rate of violent crimes of the community multiplied by the average number of bedrooms per unit of the housing agency. For the minority of housing agencies lacking community-wide violent crime data, impute data based on the average values of comparable communities with data where comparable communities have a certain size in the State or region (and, if data are available, some other characteristics). Agencies exceeding the threshold would receive additional formula funding. In broad terms, agencies under the threshold of need will receive no funding under this factor and agencies just above the threshold will receive modest funding under this factor and agencies well above the threshold will receive very high funding under this factor.

Option C.2. Allow all renewable agencies to be funded under the ''urgent need'' factor through an index of the rate of violent crimes of the community multiplied by the average number of bedrooms per unit of the housing agency, and then allow the factor to target more funds to housing agencies with relatively urgent needs. By contrast to Option C.1., agencies under the threshold of need in Option C.2. will receive some funding under this factor and agencies just above the threshold will receive moderate funding under this factor and agencies well above the threshold will receive high funding under this factor (but not as much relative to what they would receive under Option C.1.).

*HUD Preference.* HUD prefers Option C.1. The subset of urgent need agencies follows closely the intention of the statute. At the same time, HUD prefers that the factor for this subset be subsumed into a funding system that covers all renewable agencies (please see the discussion in Option D.2 below.)

*D. Funding Renewable Agencies versus Urgent Need Agencies—Issues for Consideration*

Option D.1. Have two pools of funds based on the relative share of needs of the two categories of agencies (renewable agencies and urgent need agencies) and fund them by different criteria.

Option D.2. Have a combined funding system that has different factors (weighted up to 100 percent) that applies to the universe of agencies to be funded and that also reflects their relative needs.

*HUD Preference.* HUD prefers Option D.2. This option is the easiest to understand and the easiest to compute. In this option, the weights and funding impacts of the different factors are explicit.

*E. Standard Factors for Funding Agencies—Options for Consideration*

Standard factors that may be included in a formula for PHDEP funding are:

Option E.1. A minimum floor of $25,000 per year.

Option.E.2. The share of funding (or average share) provided to the housing agency during Fiscal Years 1996, 1997 and 1998.

Option E.3. The housing agency's share of units.

Option E.4. The housing agency's share of units multiplied by an index of the average number of bedrooms per unit.

Option E.5. The housing agency's share of units multiplied by the positive difference, if any, between the housing agency's score and the unit-weighted median score of all housing agencies on the following index: the rate of violent crimes of the community multiplied by the average number of bedrooms per unit of the housing agency. The rate of violent crimes is capped at twice the median of the unit weighted scores across all housing agencies. To better understand how this calculation works, please see HUD's posting of a format statement of its method with a printout of data and estimated formula amounts at HUD's website at http://www.hud.gov/pih/legis/titlev.html.

Option E.6. The housing agency's share of units multiplied by both the rate of the violent crimes of its community and by the average number of bedrooms per unit of the housing agency. The rate of violent crimes is capped at twice the median of the unit weighted scores across all housing agencies.

*HUD Preference.* To address the statutory goal of predictable and equitable funding, HUD prefers a formula system that includes the factors of Options E.1, 3, 4 and 5. For a weighted formula system, HUD prefers that the factor in Option E.3 be weighted .25; that the factor in Option E.4 be weighted .50, and that the factor in Option E.5 be weighted .25. HUD also prefers a minimum floor of $25,000. All of HUD's preferences expressed in this notice are illustrated by the format statement with a printout of the data and estimated formula amounts that was referred to earlier and that is posted at HUD's website at http://www.hud.gov/pih/legis/titlev.html.

*F. Impact of a Housing Agency's Performance on Funding—Issues for Consideration*

Option F.1. Housing agencies that do not meet performance criteria will have their funds for a given year returned to other housing agencies—either to the pool of funds for renewable agencies or to the pool of fund for urgent need agencies or to a combined pool.

Option F.2. Housing agencies with excessive funds that are unspent or unobligated, for reasons within their control, will have their funds for a given year reduced in proportion to the extent of unspent or unobligated funds.

*HUD Preference.* HUD has no preference at this time.

**Solicitation of Comments**

HUD is requesting interested housing agencies and other interested members of the public to submit public comments on the options and issues for consideration of formula funding for PHDEP presented in this notice, including applicable performance criteria. HUD also welcomes additional options and issues that housing agencies or other members of the public believe

that HUD should consider in developing a formula funding method. Further, HUD welcomes any formula methods that housing agencies or other interested members of the public have devised and for which they request HUD's consideration. Public comments received in response to this notice will be considered in the development of HUD's proposed rule on formula funding for PHDEP.

**Executive Order 12866**

The Office of Management and Budget (OMB) has reviewed this advanced notice of proposed rulemaking (ANPR) under Executive Order 12866, Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Dated: February 9, 1999.

**Deborah Vincent,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. 99–4004 Filed 2–17–99; 8:45 am]

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Federal Register

Thursday
February 18, 1999

## Part VI

# Department of Transportation

### Maritime Administration

### Voluntary Intermodal Sealift Agreement; Notice

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Voluntary Intermodal Sealift Agreement

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of Voluntary Intermodal Sealift Agreement (VISA).

**SUMMARY:** The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) for another two-year period until February 13, 2001, pursuant to provision of the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond Barberesi, Director, Office of Sealift Support, Room 7307, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2323, Fax (202) 493–2180.

**SUPPLEMENTARY INFORMATION:** Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), ''Voluntary agreements for preparedness programs and expansion of production capacity and supply'', authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, ''* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *'' in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation, among others. By DOT Order 1900.8, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces.

The text of the VISA, as published in the **Federal Register** on February 13, 1997, is identical to the text published herein which will now be extended until February 13, 2001.

The text published herein will now be implemented. Copies will be made available to the public upon request.

### Text of the Voluntary Intermodal Sealift Agreement

### Voluntary Intermodal Sealift Agreement (VISA)

December 9, 1996.

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### Figure 1—VISA Activation Process Diagram

**Abbreviations**

''AMC''—Air Mobility Command
''CCA''—Carrier Coordination Agreements
''CDS''—Construction Differential Subsidy
''CFR''—Code of Federal Regulations
''CONOPS''—Concept of Operations
''DoD''—Department of Defense
''DOJ''—Department of Justice
''DOT''—Department of Transportation
''DPA''—Defense Production Act
''EUSC''—Effective United States Control
''FAR''—Federal Acquisition Regulations
''FEMA''—Federal Emergency Management Agency
''FTC''—Federal Trade Commission
''JCS''—Joint Chiefs of Staff
''JPAG''—Joint Planning Advisory Group
''MARAD''—Maritime Administration, DOT
''MSP''—Maritime Security Program
''MSC''—Military Sealift Command
''MTMC''—Military Transportation Management Command
''NCA''—National Command Authorities
''NDRF''—National Defense Reserve Fleet maintained by MARAD
''ODS''—Operating Differential Subsidy
''RRF''—Ready Reserve Force component of the NDRF
''SecDef''—Secretary of Defense
''SecTrans''—Secretary of Transportation
''USCINCTRANS''—Commander in Chief, United States Transportation Command
''USTRANSCOM''—United States Transportation Command (including its sealift transportation component, Military Sealift Command)
''VISA''—Voluntary Intermodal Sealift Agreement
''VSA''—Vessel Sharing Agreement

### Definitions

For purposes of this agreement, the following definitions apply.

*Administrator*—Maritime Administrator.

*Agreement*—Agreement (proper noun) refers to the Voluntary Intermodal Sealift Agreement (VISA).

*Attorney General*—Attorney General of the United States.

*Broker*—A person who arranges for transportation of cargo for a fee.

*Carrier Coordination Agreement (CCA)*—An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (i) charter vessels or portions of the cargo-carrying capacity of vessels; (ii) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (iii) share wharves, warehouse, marshaling yards and other marine terminal facilities; and (iv) coordinate the movement of vessels.

*Chairman*—FTC—Chairman of the Federal Trade Commission (FTC).

*Charter*—Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

*Commercial*—Transportation service provided for profit by privately owned (not government owned) vessels to a

private or government shipper. The type of service may be either common carrier or contract carriage.

*Contingency*—Includes, but is not limited to a ''contingency operation'' as defined at 10 App. U.S.C. 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

*Contingency contracts*—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

*Contract carrier*—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

*Controlling interest*—More than a 50-percent interest by stock ownership.

*Director*—FEMA—Director of Federal Emergency Management Agency (FEMA).

*Effective U.S. Control (EUSC)*—U.S. citizen-owned ships which are registered in certain open registry countries and which the United States can rely upon for defense in national security emergencies. The term has no legal or other formal significance. U.S. citizen-owned ships registered in Liberia, Panama, Honduras, the Bahamas and the Republic of the Marshall Islands are considered under effective U.S. control. EUSC registries are recognized by the Maritime Administration after consultation with the Department of Defense. (MARAD OPLAN 001A, 17 July 1990)

*Enrollment Contract*—The document, executed and signed by MSC, and the individual carrier enrolling that carrier into VISA Stage III.

*Foreign flag vessel*—A vessel registered or documented under the law of a country other than the United States of America.

*Intermodal equipment*—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other materiel handling equipment, as well as other ancillary items.

*Liner*—Type of service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific ports or ranges.

*Liner throughput capacity*—The system/intermodal capacity available and committed, used or unused, depending on the system cycle time necessary to move the designated capacity through to destination. Liner throughput capacity shall be calculated as: static capacity (outbound from CONUS) X voyage frequency X.5.

*Management services*—Management expertise and experience, intermodal terminal management, information resources, and control and tracking systems.

*Ocean Common carrier*—An entity holding itself out to the general public to provide transportation by water of passengers or cargo for compensation; which assumes responsibility for transportation from port or point of receipt to port or point of destination; and which operates and utilizes a vessel operating on the high seas for all or part of that transportation. (As defined in 46 App. U.S.C. 1702, 801, and 842 regarding international, interstate, and intercoastal commerce respectively.)

*Operator*—An ocean common carrier or contract carrier that owns or controls or manages vessels by which ocean transportation is provided.

*Organic sealift*—Ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

*Participant*—A signatory party to VISA, and otherwise as defined within Section VI of this document.

*Person*—Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

*SecTrans*—Secretary of Transportation.

*Service contract*—A contract between a shipper (or a shipper's association) and an ocean common carrier (or conference) in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule, as well as a defined service level (such as assured space, transit time, port rotation, or similar service features), as defined in the Shipping Act of 1984. The contract may also specify provisions in the event of nonperformance on the part of either party.

*Standby period*—The interval between the effective date of a Participant's acceptance into the Agreement and the activation of any stage, and the periods between deactivation of all stages and any later activation of any stage.

*U.S. Flag Vessel*—A vessel registered or documented under the laws of the United States of America.

*USTRANSCOM*—The United States Transportation Command and its component commands (AMC, MSC and MTMC).

*Vessel Sharing Agreement (VSA) Capacity*—Space chartered to a Participant for carriage of cargo, under its commercial contracts, service contracts or in common carriage, aboard vessels shared with another carrier or carriers pursuant to a commercial vessel sharing agreement under which the carriers may compete with each other for the carriage of cargo. In U.S. foreign trades the agreement is filed with the Federal Maritime Commission (FMC) in conformity with the Shipping Act of 1984 and implementing regulations.

*Volunteers*—Any vessel owner/operator who is an ocean carrier and who offers to make capacity, resources or systems available to support contingency requirements.

**Preface**

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158)(Section 708)(DPA), in cooperation with the Department of Defense (DoD), has developed this Agreement [hereafter called the Voluntary Intermodal Sealift Agreement (VISA)] to provide DoD the commercial sealift and intermodal shipping services/systems necessary to meet national defense Contingency requirements.

USTRANSCOM procures commercial shipping capacity to meet requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and Department of Transportation (DOT) (through MARAD) maintain and operate a fleet of ships owned by or under charter to the Federal Government to meet the logistic needs of the military services which cannot be met by existing commercial service. Ships of the Ready Reserve Force (RRF) are selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military Contingency. Foreign-flag shipping is used in accordance with applicable laws, regulations and policies.

The objective of VISA is to provide DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability to augment DoD's

organic sealift capabilities. This Agreement establishes the terms, conditions and general procedures by which persons or parties may become VISA Participants. Through advance joint planning among USTRANSCOM, MARAD and the Participants, Participants may provide predetermined capacity in designated stages to support DoD Contingency requirements.

VISA is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which Contingency needs and the needs of the civil economy can be met by cooperative action. During Contingencies, Participants are afforded maximum flexibility to adjust commercial operations by Carrier Coordination Agreements (CCA), in accordance with applicable law.

Participants will be afforded the first opportunity to meet DoD peacetime and Contingency sealift requirements within applicable law and regulations, to the extent that operational requirements are met. In the event VISA Participants are unable to fully meet Contingency requirements, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants in accordance with applicable law and by ships requisitioned under Section 902 of the Merchant Marine Act, 1936 (as amended) (46 App. U.S.C. 1242). In addition, containers and chassis made available under VISA may be supplemented by services and equipment acquired by USTRANSCOM or accessed by the Administrator through the provisions of 46 CFR Part 340.

The Secretary of Defense (SecDef) has approved VISA as a sealift readiness program for the purpose of Section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248).

**Voluntary Intermodal Sealift Agreement**

*I. Purpose*

A. The Administrator has made a determination, in accordance with Section 708(c)(1) of the Defense Production Act (DPA) of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement for utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman of the Federal Trade Commission, has issued a finding that dry cargo shipping capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of VISA is to provide a responsive transition from peace to Contingency operations through pre-coordinated agreements for sealift capacity to support DoD Contingency requirements. VISA establishes procedures for the commitment of intermodal shipping services/systems to satisfy such requirements. VISA will change from standby to active status upon activation by appropriate authority of any of the Stages, as described in Section V.

C. It is intended that VISA promote and facilitate DoD's use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants' capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, SeaBee).

*II. Authorities*

A. MARAD

1. Sections 101 and 708 of the DPA, as amended (50 App. U.S.C. 2158); Executive Order 12919, 59 FR 29525, June 7, 1994; Executive Order 12148, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR Part 332; DOT Order 1900.8; 46 CFR Part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to SecTrans, among others. By DOT Order 1900.8, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating USCINCTRANS to provide air, land, and sea transportation for the DoD.

*III. General*

A. Concept

1. VISA provides for the staged, time-phased availability of Participants' shipping services/systems to meet NCA-directed DoD Contingency requirements in the most demanding defense oriented sealift emergencies and for less demanding defense oriented situations through prenegotiated Contingency contracts between the government and Participants (see Figure 1). Such arrangements will be jointly planned with MARAD, USTRANSCOM, and Participants in peacetime to allow effective, and efficient and best valued use of commercial sealift capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

a. Stages I and II provide for prenegotiated contracts between the DoD and Participants to provide sealift capacity against all projected DoD Contingency requirements. These agreements will be executed in accordance with approved DoD contracting methodologies.

b. Stage III will provide for additional capacity to the DoD when Stages I and II commitments or volunteered capacity are insufficient to meet Contingency requirements, and adequate shipping services from non-Participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

a. U.S. Flag vessel capacity operated by a Participant and U.S. Flag Vessel Sharing Agreement (VSA) capacity of a Participant.

b. U.S. Flag vessel capacity operated by a non-Participant.

c. Combination U.S./foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.

d. Combination U.S./foreign flag vessel capacity operated by a non-Participant.

e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a Participant.

f. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.

g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

4. Under Section VI.F. of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. The SecDef, through USTRANSCOM, shall:

a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II and III to augment DoD sealift resources.

b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.

c. Obtain Contingency sealift capacity through the implementation of specific prenegotiated DoD Contingency contracts with Participants.

d. Notify the Administrator upon activation of any stage of VISA.

e. Co-chair (with MARAD) the Joint Planning Advisory Group (JPAG).

f. Establish procedures, in accordance with applicable law and regulation, providing Participants with necessary determinations for use of foreign flag vessels to replace an equivalent U.S. Flag capacity to transport a Participant's normal peacetime DoD cargo, when Participant's U.S. Flag assets are removed from regular service to meet VISA Contingency requirements.

g. Provide a reasonable time to permit an orderly return of a Participant's vessel(s) to its regular schedule and termination of its foreign flag capacity arrangements as determined through coordination between DoD and the Participants.

h. Review and endorse Participants' requests to MARAD for use of foreign flag replacement capacity for non-DoD government cargo, when U.S. Flag capacity is required to meet Contingency requirements.

2. The SecTrans, through MARAD, shall:

a. Review the amount of sealift resources committed in DoD contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the commercial sealift industry's ability to provide essential services. MARAD's analysis shall be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification will occur on an annual basis upon USCINCTRANS' acceptance of VISA commitments from the Participants. If so advised by MARAD, USTRANSCOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Coordinate with DOJ for the expedited approval of CCAs.

c. Upon request by USCINCTRANS and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD shall have priority consideration in any allocation situation.

d. Establish procedures, pursuant to Section 653(d) of the Maritime Security Act (MSA), for determinations regarding the equivalency and duration of the use of foreign flag vessels to replace U.S. Flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under Section 652 of the MSA and whose U.S. Flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign flag vessels shall be eligible to transport cargo subject to the Cargo Preference Act of 1904 (10 U.S.C. 2631), P.R. 17 (46 App. U.S.C. 1241–1), and P.L. 664 (46 App. U.S.C. 1241(b)). However, any procedures regarding the use of such foreign flag vessels to transport cargo subject to the Cargo Preference Act of 1904 must have the concurrence of USTRANSCOM before it becomes effective.

e. Co-chair (with USTRANSCOM) the JPAG.

f. Seek necessary Jones Act waivers as required. To the extent feasible, participants with Jones Act vessels or vessel capacity will use CCAs or other arrangements to protect their ability to maintain services for their commercial customers and to fulfill their commercial peacetime commitments with U.S. Flag vessels. In situations where the activation of this Agreement deprives a Participant of all or a portion of its Jones Act vessels or vessel capacity and, at the same time, creates a general shortage of Jones Act vessel(s) or vessel capacity on the market, the Administrator may request that the Secretary of the Treasury grant a temporary waiver of the provisions of the Jones Act to permit a Participant to charter or otherwise utilize non-Jones Act vessel(s) or vessel capacity, with priority consideration recommended for U.S. crewed vessel(s) or vessel capacity. The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the Jones Act vessel(s) or vessel capacity chartered or under contract to the DoD, and any waiver that may be granted will be effective for the period that the Jones Act vessel(s) or vessel capacity is on charter or under contract to the DoD plus a reasonable time for termination of the replacement charters as determined by the Administrator.

C. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as soon as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements made by the DoD under this Agreement.

2. In the event of general requisitioning of ships under 46 App. U.S.C. 1242, the Administrator shall consider commitments made with the DoD under this Agreement.

D. Modification/Amendment of This Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman-FTC, SecTrans, through his representative MARAD, and SecDef, through his representative USCINCTRANS. Although Participants may withdraw from this Agreement pursuant to Section VI.D, they remain subject to VISA as amended or modified until such withdrawal.

2. The Administrator, USCINCTRANS and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman-FTC.

3. Participants may propose amendments to this Agreement at any time.

E. Administrative Expenses

Administrative and out-of-pocket expenses incurred by a participant shall be borne solely by the participant.

F. Record Keeping

1. MARAD has primary responsibility for maintaining carrier VISA application records in connection with this Agreement. Records will be maintained in accordance with MARAD Regulations. Once a carrier is selected as a VISA Participant, a copy of the VISA application form will be forwarded to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD is responsible for the making and record maintenance of a full and verbatim transcript of each JPAG meeting. MARAD shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman-FTC, the Director-FEMA, any other party or repository required by law and to Participants upon their request.

3. USTRANSCOM shall be the official custodian of records related to the contracts to be used under this Agreement, to include specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any

communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, USCINCTRANS, the Attorney General, and the Chairman-FTC for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C. 552(b) or identified as privileged and confidential information in accordance with Section 708(e).

G. MARAD Reporting Requirements

MARAD shall report to the Director-FEMA, as required, on the status and use of this agreement.

*IV. Joint Planning Advisory Group*

A. The JPAG provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.

2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.

3. Develop and recommend Concepts of Operations (CONOPS) to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. The JPAG will be co-chaired by MARAD and USTRANSCOM, and will convene as jointly determined by the co-chairs.

C. The JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG. Participants may be assigned to working groups as necessary to develop specific CONOPS.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

D. The JPAG will not be used for contract negotiations and/or contract discussions between carriers and the DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman-FTC, Participants and the maritime labor representative of the time, place and nature of each JPAG meeting.

2. Provide for publication in the **Federal Register** of a notice of the time, place and nature of each JPAG meeting. If the meeting is open, a **Federal Register** notice will be published reasonably in advance of the meeting. If a meeting is closed, a **Federal Register** notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman-FTC, and to Participants, upon request.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that Contingency planning information can be shared with Participants to enable them to plan their commitments.

*V. Activation of VISA Contingency Provisions*

A. General

VISA may be activated at the request of USCINCTRANS, with approval of SecDef, as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with prenegotiated Contingency contracts between DoD and Participants.

B. Notification of Activation

1. USCINCTRANS will notify the Administrator of the activation of Stages I, II, and III.

2. The Administrator shall notify the Attorney General and the Chairman-FTC when it has been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.

2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their prenegotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.

4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by USCINCTRANS, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. USCINCTRANS will notify the Administrator upon activation.

2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed the capability of Stage I and/or voluntarily committed resources.

2. Stage II will be activated by USCINCTRANS, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to USCINCTRANS.

2. Stage III will be activated by USCINCTRANS upon approval by

SecDef. Upon activation, DoD SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA, to meet the Contingency requirement. All Participants' capacity committed to VISA is subject to use during Stage III.

3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, USTRANSCOM will negotiate and execute Contingency contracts with Participants, using pre-approved rate methodologies as established jointly by SecTrans and SecDef in fulfillment of Section 653 of the Maritime Security Act of 1996. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions of Section 902 of the Merchant Marine Act of 1936, Title 46 App. U.S.C. 1242.

4. Simultaneously with activation of Stage III, the DoD Sealift Readiness Program (SRP) will be activated for those carriers still under obligation to that program.

G. Partial Activation

As used in this Section V, activation ''in part'' of any Stage under this Agreement shall mean one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or

2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or

3. Activation of only a portion of the entire committed capacity of all of the Participants in any Stage that is activated.

*VI. Terms and Conditions*

A. Participation

1. Any U.S. Flag vessel operator organized under the laws of a State of the United States, or the District of Columbia, may become a ''Participant'' in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Enrollment Contract with DoD which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. The term ''Participant'' includes the entity described in VI.A.1 above, and all United States subsidiaries and affiliates of the entity which own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

3. Upon request of the entity executing the form referenced in Section VII, the term ''Participant'' may include the controlled non-domestic subsidiaries and affiliates of such entity signing this Agreement, provided that the Administrator, in coordination with USCINCTRANS, grants specific approval for their inclusion.

4. Any entity receiving payments under the Maritime Security Program (MSP), pursuant to the Maritime Security Act of 1996 (MSA) (P.L. 104–239), shall become a ''Participant'' with respect to all vessels enrolled in MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. The MSP operator shall be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in Section 653 of the MSA.

5. A Participant shall be subject only to the provisions of this Agreement and not to the provisions of the SRP.

6. MARAD shall publish periodically in the **Federal Register** a list of Participants.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with DoD Contingency contracts. USTRANSCOM will review and approve each Participant's commitment to ensure it meets DoD Contingency requirements. A Participant's capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded with the exception of Jones Act capacity (as discussed in paragraph 4 below).

2. DoD may also enter into Contingency contracts, not linked to peacetime contract commitments, with Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants' resources to VISA is as follows:

a. Stage III: A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S. Flag capacity into Stage III. Carriers receiving DOT payments under the MSP, or carriers subject to Section 909 of Merchant Marine Act of 1936, as amended, that are not enrolled in the SRP will have vessels receiving such assistance enrolled in Stage III. Participants' capacity under charter to DoD will be considered ''organic'' to DoD, and does not count towards the Participant's Contingency commitment during the period of the charter. Participants utilized under Stage III activation will be compensated based upon a DoD pre-approved rate methodology.

b. Stages I and II: DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term (i.e., one year or longer) DoD contract, exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment shall become the actual amount of a Participant's U.S. Flag capacity commitment to Stages I and II. A Participant's Stage III U.S. Flag capacity commitment shall represent its total minimum VISA commitment. That Participant's Stage I and II capacity commitments as well as any volunteer capacity contribution by Participant are portions of Participant's total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with prenegotiated Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services needed to utilize the ship and equipment at not less than the Participant's normal efficiency, in accordance with the prenegotiated Contingency contracts implementing this Agreement.

C. Effective Date and Duration of Participation

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in Section VII, and approval by USTRANSCOM by execution of an Enrollment Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44 CFR Sec. 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts shall remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination shall become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant shall be required to complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement at any time during the original term of the MSP operating agreement.

3. A Participant's withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

4. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Rules and Regulations

Each Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman-FTC. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. 46 CFR Part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all authorized rules and regulations while in Participant status.

F. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of the DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of Section 708(j) of the DPA shall be identified as such and shall be submitted to the Administrator for approval and certification in accordance with Section 708(f)(1)(A) of the DPA. Upon approval and certification, the Administrator shall transmit the Agreement to the Attorney General for a finding in accordance with Section 708(f)(1)(B) of the DPA. Parties to approved CCAs may avail themselves of the antitrust defenses set forth in Section 708(j) of the DPA. Nothing in VISA precludes Participants from engaging in lawful conduct (including carrier coordination activities) that lies outside the scope of an approved Carrier Coordination Agreement; but antitrust defenses will not be available pursuant to Section 708(j) of the DPA for such conduct.

3. Participants may seek approval for CCAs at any time.

G. Enrollment of Capacity (Ships and Equipment)

1. A list identifying the ships/capacity and intermodal equipment committed by a Participant to each Stage of VISA will be prepared by the Participant and submitted to USTRANSCOM within seven days after a carrier has become a Participant. USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant's VISA commitment data and all changes to MARAD.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the DPA, 5 App. U.S.C. 552(b), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT shall provide non-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1285(a)).

2. Pursuant to 46 CFR 308.1(c), the Administrator (or DOT) will find each ship enrolled or utilized under this agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

1. Under the provisions of DPA Section 708, each carrier shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement, that such act was taken in the course of developing or carrying out this Agreement and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. This defense shall not be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense shall be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator, on behalf of SecTrans, and DoD will support agreements filed by Participants with the Federal Maritime Commission that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken by a Participant during an emergency (including action taken in imminent anticipation of an emergency) to carry out this Agreement. Such defense shall not release the party asserting it from

any obligation under applicable law to mitigate damages to the greatest extent possible.

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S. Flag or foreign-owned and operated foreign flag vessel capacity as a substitute for VISA Contingency capability provided:

a. The foreign flag capacity is utilized in accordance with cargo preference laws and regulations.

b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

d. Service requirements are satisfied.

e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant's U.S. Flag VSA capacity in another Participant's vessel shall not act in a manner to increase a Participant's capacity commitment to VISA.

2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

*VII. Application and Agreement*

The Administrator, in coordination with USCINCTRANS has adopted the form on page 31 (''Application to Participate in the Voluntary Intermodal Sealift Agreement'') on which intermodal ship operators may apply to become a Participant in this Agreement. The form incorporates, by reference, the terms of this Agreement.

**United States of America, Department of Transportation, Maritime Administration**

*Application To Participate in the Voluntary Intermodal Sealift Agreement*

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Intermodal Sealift Agreement.'' The text of said Agreement is published in _____ **Federal Register** _____, _____, 19____. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 App. U.S.C. 2158). Regulations governing this Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in _____ **Federal Register** _____, _____, 19____, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels or capacity, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent Department of Defense Voluntary Intermodal Sealift Agreement Enrollment Contract for the purpose of meeting national defense requirement.

Attest:

(Corporate Secretary)

(CORPORATE SEAL)

Effective Date: _____

(Secretary)

(SEAL)

_____

(Applicant—Corporate Name)

_____

(Signature)

_____

(Position Title)

United States of America, Department of Transportation, Maritime Administration

By: _____

Maritime Administrator

Dated: February 11, 1999.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

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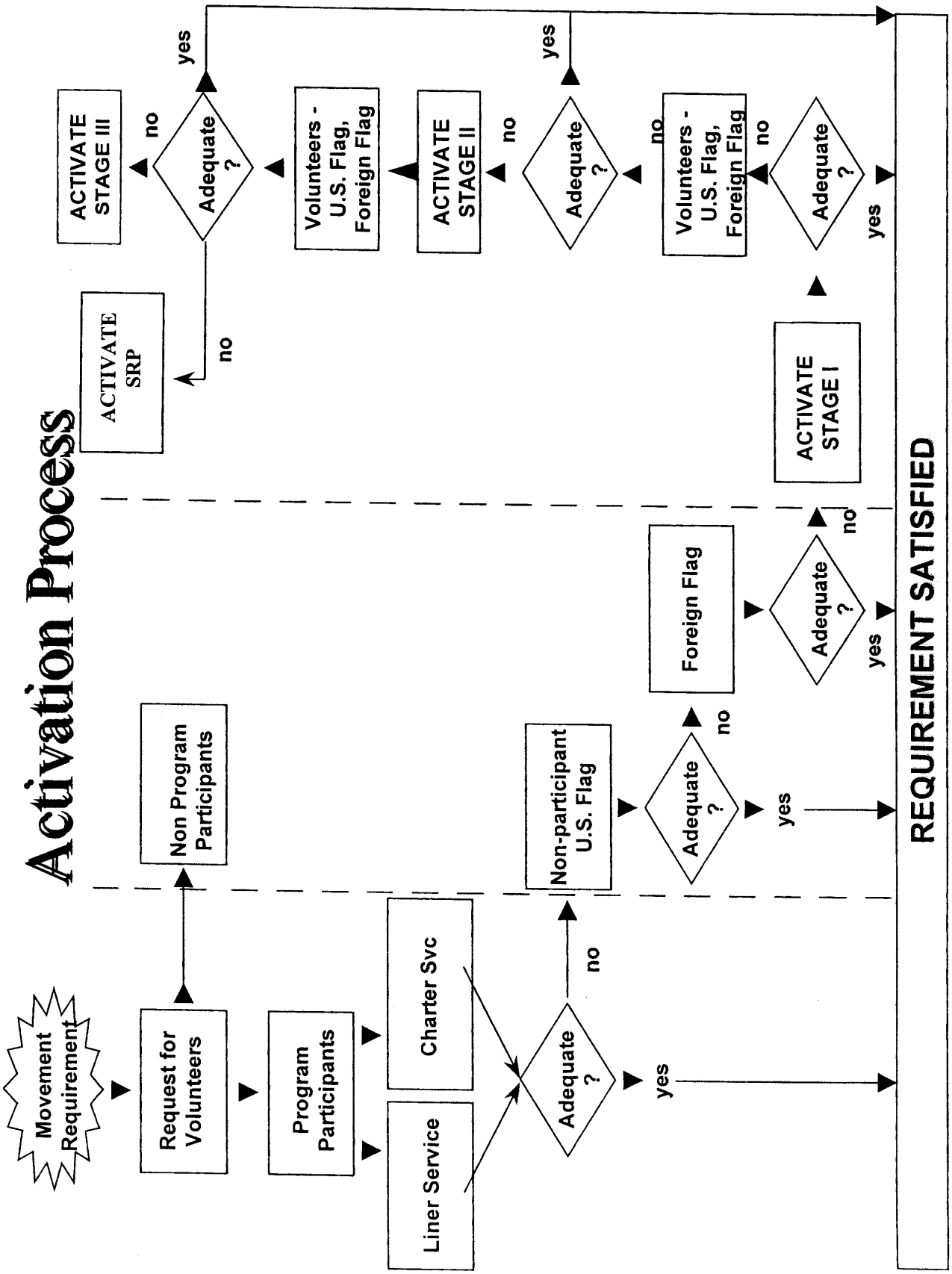


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Federal Register

Thursday
February 18, 1999

## Part VII

# Department of Health and Human Services

### Food and Drug Administration

**Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**Editorial note:** This document, FR Doc. 99-3630, was originally filed for public inspection on February 10, 1999 at 12:50 pm. Due to a printing error it was not published on February 12, 1999, as originally scheduled.

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on February 26, 1999, 8 a.m. to 5 p.m.

*Location:* Gaithersburg Marriott Washingtonian Center, Salons A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

*Contact Person:* Sharon K. Lappalainen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will discuss, make recommendations, and vote on a premarket approval application for a continuous glucose monitoring system that is indicated for the continuous recording of interstitial glucose levels in persons with diabetes mellitus.

*Procedure:* On February 26, 1999, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 16, 1999. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:45 a.m. Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission or topic before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 16, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On February 26, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

FDA regrets that it was unable to publish this notice 15 days prior to the February 26, 1999, Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring this issue to public discussion and qualified members of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 3, 1999.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 99–3630 Filed 2–10–99; 12:50 pm]

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Vol. 64, No. 32

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